

**INTERLOCAL AGREEMENT FOR THE ACCEPTANCE AND PROCESSING
OF SOURCE SEPARATED RECYCLABLES**

This Interlocal Agreement for the Acceptance and Processing of Source Separated Recyclables (hereinafter “Agreement”) is made and entered into as of this ____ day of _____, 2019, by and between the Emerald Coast Utilities Authority, a local governmental body, corporate and politic, which was formed by the Florida Legislature as an independent special district (hereinafter “ECUA”) with administrative offices located at 9255 Sturdevant Street, Pensacola, Florida 32514, and the City of Pensacola, Florida, a municipal corporation of the State of Florida (hereinafter “City”), with administrative offices located at 222 West Main Street, Pensacola, Florida 32502 (each at times also being referred to as a “Party” or collectively as “Parties”).

W I T N E S S E T H:

WHEREAS, the City Council of the City of Pensacola and ECUA are authorized by Section 163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their powers and resources in the most efficient manner possible; and

WHEREAS, Source Separated Recyclables are collected in the City of Pensacola through a curbside recycling collection program operated by the City; and

WHEREAS, the Source Separated Recyclables collected in the City of Pensacola must be processed and sorted into separate commodities so as to facilitate their resale so that the Recyclable Materials may be recycled and put to beneficial use; and

WHEREAS, ECUA has a Municipal Recycling Facility (MRF) which is capable of processing Source Separated Recyclables; and

WHEREAS, the City would like to deliver all of the Source Separated Recyclables collected by the City in its curbside recycling program to the ECUA MRF so that the Source Separated Recyclables may be processed, segregated into recyclable commodities, and put to beneficial use; and

WHEREAS, the Parties desire to clarify the terms and conditions under which the City may deliver and the ECUA MRF may accept Source Separated Recyclables collected by the City.

NOW THEREFORE in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Recitals. The recitals contained in the preamble to this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

2. Definitions. As used in this Agreement the following terms shall have the following meanings:

2.1 *Applicable Law* -- shall mean all applicable federal, state and local statutes, codes, ordinances and standards and all applicable rules, regulations, licenses, permits, registrations, approvals, decisions, authorizations, judgments, orders, writs, decrees, directives or other action adopted, issued or taken by a governmental authority.

2.2 *Construction and Demolition Waste or C&D Waste* -- shall mean waste building materials, packaging and rubble resulting from construction, remodeling, repair, or demolition operations on houses, commercial buildings, and other structures, or as otherwise defined from time to time. Such wastes include, but are not limited to, concrete and paving debris, masonry materials, sheet rock, roofing waste, insulation (not including asbestos or asbestos containing materials), scrap metal, wood products, and other similar materials (not including asbestos or asbestos containing materials).

2.3 *ECUA MRF* -- shall refer to the Municipal Recycling Facility designed and constructed by ECUA which is located at the Perdido Landfill at 13009 Beulah Road, Cantonment, Florida 32533.

2.4 *Effective Date* -- shall mean _____, 2019, and the first day on or after that date on which the City collects Source Separated Recyclables and the ECUA MRF is operating shall be the date the ECUA MRF begins accepting Source Separated Recyclables delivered to it from the City.

2.5 *Garbage* -- shall mean any putrescible animal and/or vegetative waste resulting from the handling, preparation, cooking and consumption of food, including, but not limited to, waste from markets, storage facilities, handling and sale of

produce and other food products and further includes the packaging materials and containers, but excepting such materials that may be serviced by garbage grinders and handled as household sewage.

2.6 *Hazardous Waste* -- shall mean (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as may be amended from time to time, including: (i) the Resource Conservation and Recovery Act of 1976 ("RCRA") and the regulations contained in 40 CFR Parts 260-281, (ii) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766, and (iii) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage, or disposal of toxic substances, or hazardous wastes; (b) radioactive materials, which are source, special nuclear, or by-product materials, as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40; (c) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or Section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. § § 11002(a), 110239(c) (Supp. 1993), in each case as the same may be amended, replaced, or superseded; (d) a material or substance which may endanger health or safety, including any material or substance or combination of materials or substances which are explosive, volatile, radioactive, toxic, corrosive, flammable, reactive, an irritant or a strong sensitizer, or which generate pressure through decomposition, heat or other means if such materials or substances may cause injury, illness or harm to humans, domestic animals, livestock or wildlife; (e) a material falling within the definition of Fla. Stat. § 403.703(13); or (f) a material or substance that is treated as a hazardous or toxic waste, substance, or material by any Applicable Law or is otherwise prohibited from being deposited in a municipal solid waste processing facility under Applicable Law. Household Hazardous Waste contained in SSR shall not be considered Hazardous Waste for purposes of this Agreement and shall be accepted at the Facility if such acceptance is in compliance with the requirements of RCRA and the requirements of the MRF. With regard to materials

or substances which are not Hazardous Waste as of the Effective Date, if any Applicable Law is subsequently enacted or amended or any governmental authority thereafter determines that such material or substance is a hazardous or toxic waste, substance or material, then such material or substance shall be considered Hazardous Waste for the purposes of this Agreement from and after the effective date of such enactment or amendment of Applicable Law or governmental authority determination.

2.7 *Municipal Solid Waste or MSW* -- shall mean Garbage, household waste, and commercial solid waste; provided that for the purposes of this Agreement, Municipal Solid Waste shall not include Source Separated Recyclables, C&D Waste, Hazardous Waste, Special Handling Waste, Unacceptable Waste, or scrap tires.

2.8 *Perdido Landfill* -- shall mean the landfill currently operated by Escambia County, Florida which is located at 13009 Beulah Road, Cantonment, Florida 32533.

2.9 *Prohibited Materials* -- shall mean Municipal Solid Waste, C&D Waste, Hazardous Waste, Special Handling Waste, Unacceptable Waste, Yard Waste, scrap tires and any other solid waste or material of any kind that the ECUA MRF is prohibited from accepting pursuant to agreement, Applicable Law, or operational constraints.

2.10 *Recyclables or Recyclable Materials* -- shall mean various recyclable products and packaging designated by ECUA to be accepted at the MRF for processing, including various types of paper (including but not limited to newspaper, junk mail, magazines, office paper, cardboard and paperboard packaging), containers (including but not limited to glass bottles and jars, aluminum and steel cans, and #1 - #7 plastics), and mixed ferrous and non-ferrous metals. The terms Recyclables and Recyclable Materials shall not include Municipal Solid Waste, Construction and Demolition Waste, Hazardous Waste, Special Handling Waste, Unacceptable Waste, styrofoam, or scrap tires. The list of Recyclables may be expanded or contracted from time to time as determined by ECUA and the operator of the ECUA MRF, if any.

2.11 *Rejects* -- shall refer to materials collected along with the Recyclable Materials that are not designated by ECUA to be accepted at the MRF for processing.

2.12 *Residue* -- shall refer to Rejects and Recyclable Materials that are accepted by the operator of the ECUA MRF, processed at the MRF, and not converted to Recovered Materials due to breakage and/or transportation or processing limitations or inefficiencies.

2.13 *Shutdown* -- shall refer to those times in which the operator of the ECUA MRF is unable to receive Source Separated Recyclables for any reason except Force Majeure.

2.14 *Source Separated Recyclables or SSR* -- shall refer to Recyclables which (a) have been diverted or removed from the Municipal Solid Waste prior to collection, (b) are not C&D Waste, Hazardous Waste, Special Handling Waste, Yard Waste, Unacceptable Waste or scrap tires, (c) are not Municipal Solid Waste, and (d) the ECUA MRF is not prohibited from accepting and/or Processing under Applicable Law. The Parties acknowledge, however, that incidental amounts of Rejects may be collected and delivered with Source Separated Recyclables as a normal part of a recycling collection program.

2.15 *Special Handling Waste* -- shall mean any waste or other material that requires the delivery and disposal to be supervised by a government authority, including confiscated drugs and records of a police department or similar governmental authority.

2.16 This paragraph is intentionally left blank.

2.17 *Unacceptable Waste* -- shall mean (a) Hazardous Waste, explosives and ordinance materials, pathological wastes, radioactive materials, lead acid batteries, sewage sludge, highly flammable substances, cesspool or other human wastes, human and animal remains, motor vehicles, farm or other large machinery, construction materials and demolition debris and hazardous refuse addressed by regulations adopted by the United States Environmental Protection Agency ("EPA") pursuant to the Resource Conservation and Recovery Act of 1976, as amended, or other federal or state statutes, such as, but not limited to, cleaning fluids, hazardous paints, acids, caustics, poisons, radioactive materials, fine powdery earth used to filter cleaning fluid; (b) unless

consented to by ECUA, any item of waste exceeding six feet in any one of its dimensions or being in whole or in part a solid mass, the solid mass portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid mass portion; (c) all large household appliances, commonly referred to as “white goods” including refrigerators, stoves, washing machines, drying machines and water heaters; (d) any controlled substances regulated under the Controlled Substances Act, 21 USA 801 *et seq.*, or any equivalent state law; (e) small appliances containing chlorofluorocarbons (CFCs) including air conditioners, water coolers, and dehumidifiers; (f) cathode ray tubes; and (g) all other items of waste which pose a substantial threat to health or safety or the acceptance and disposal of which will cause substantial damage to, or adversely affect the continuous operation of the MRF or be in violation of any Applicable Law. Any substance or material which is determined by the EPA or any other Governmental authority subsequent to the Effective Date hereof to be hazardous, toxic, dangerous, harmful, or otherwise designated as a “waste ban,” shall, at the time of such determination, be considered Unacceptable Waste.

2.18 *Yard Waste* -- shall refer to vegetative matter resulting from landscaping maintenance and land clearing operations and includes associated rocks and soils.

3. Term. The initial term of this Agreement shall begin on the Effective Date, as defined in paragraph 2.4, above, and end on September 30, 2021. Provided, however, that the Parties may extend the term of this Agreement upon mutual written agreement.

4. Delivery and Acceptance of Source Separated Recyclables.

a. *Delivery of Source Separated Recyclables to ECUA.* Beginning on the Effective Date and throughout the term of this Agreement, the City will deliver, to the ECUA MRF, all SSR collected within the City of Pensacola.¹

b. *Right to Reject Loads Containing Excess Rejects.* In the event that

¹The ECUA MRF shall only be obligated to receive SSR at those times and on those days in which the ECUA MRF is operating, receiving SSR, and not Shutdown.

SSR delivered to the ECUA MRF contains Rejects in excess of twenty-five percent (25%) by weight, the entire load may be rejected by the operator of the ECUA MRF. In the event that such a rejection occurs, the City shall be liable for a processing fee of \$250 per load plus the disposal costs attributable to that entire rejected load at the Perdido Landfill, at the rates established by Escambia County which are then in effect.² Moreover, in the event that the City's SSR has excess Reject contamination on three separate loads within a thirty (30) day calendar period, the ECUA Executive Director or his designee, in his sole discretion, may terminate this Agreement and disqualify the City from further deliveries. In an effort to avoid such a termination, however, ECUA shall comply with an escalating reporting requirement for the rejection of loads because of excess contamination, as follows: (1) for the first such rejection within a thirty (30) day period, ECUA shall both e-mail and telephone the City Director of Sanitation Services the day the rejection recurs; (2) for the second such rejection within a thirty (30) day period, ECUA shall both e-mail and telephone the City Administrator the day the rejection occurred; and (3) for the third such rejection within a thirty (30) day period, ECUA shall both e-mail and telephone the Mayor.

c. *Compensation/Charges to City.* The City shall be compensated/charged monthly for each ton of SSR processed at the ECUA MRF, in accordance with paragraph 6 of this Agreement, below.

5. Disposal of Residue. The Parties acknowledge and understand that each load of SSR may contain Garbage, Unacceptable Waste, or other Rejects which cannot be recycled and put to beneficial use (collectively hereafter referred to as Residue). Because the SSR received from the City of Pensacola will likely be commingled with SSR generated from other jurisdictions, the Parties acknowledge and understand that it is impossible to therefore segregate the Residue by each entity. Accordingly, all such Residue shall be disposed of at the Perdido Landfill at no charge to the City.

²In the event some or all of the load cannot be lawfully disposed of at the Perdido Landfill, City shall be liable for all disposal costs associated with the disposal selected by the operator of the ECUA MRF.

6. Compensation/Charges for Delivered Recyclables. The Parties acknowledge and understand that the market for various Recyclable Materials fluctuates greatly based upon various market conditions. In order to reflect that reality, and make this Agreement viable and mutually beneficial, the Parties agree that the City shall be either compensated or charged for the SSR processed at the ECUA MRF in accordance with the document attached hereto as Exhibit A, which is hereby incorporated by reference as if fully set forth herein, based upon weights measured at the scale house operated by Escambia County at the Perdido Landfill.

7. Billing. ECUA shall send a bill to the City within fifteen (15) days of the end of each month of the calendar year which reflects all charges and credits due to the Parties pursuant to paragraph 6, above. All charges and/or credits shall be paid by the respective Party within forty-five (45) days of the end of each month of the calendar year.

8. Compliance with Law and Procedures. ECUA and the City shall perform their respective obligations under this Agreement in compliance with all Applicable Law. The City shall transport and handle SSR in its control in a safe and workmanlike manner and in full compliance with Applicable Law. ECUA shall further endeavor to maintain throughout the term of this Agreement, all permits, licenses, certificates, and approvals required by Applicable Law for the operation of the ECUA MRF.

9. Staffing at the ECUA MRF. The Parties understand that the ECUA MRF may be operated by either a third party selected by ECUA or by ECUA staff, in ECUA's sole discretion.

10. Title to Source Separated Recyclables. Upon acceptance of a load of SSR (as opposed to a rejection in accordance with paragraph 4.b, above), title to the SSR shall vest with the operator of the ECUA MRF.

11. City's Obligation to Require the Source Separation of Recyclables; Delivery of said SSR; and Tonnage Limit.

a. *Collection and Delivery Requirements.* The City presently provides for the collection of residential solid waste within its jurisdiction and offers curbside collection of Source Separated Recyclables. The City agrees to keep the

curbside collection of Source Separated Recyclables in place throughout the term of this Agreement and any extensions thereof. Additionally, the City will haul all SSR that is collected to the ECUA MRF. It is thus the Parties' intent that all SSR controlled and collected by the City will be delivered to the ECUA MRF. However, if prior to delivery to the ECUA MRF the City reasonably identifies one or more loads of SSR to contain excess contamination, as defined in paragraph 4.b, above, the City shall not be in breach of this Agreement by delivering such contaminated load/s directly to the Perdido Landfill for disposal. Should the City exercise this option, it shall endeavor to educate the public and take such actions it deems necessary or appropriate to improve the quality of its SSR.

b. *Tonnage Limit.* The Parties anticipate approximately 2,500 tons of SSR are generated and collected within the jurisdiction of the City per year. Despite the requirements in paragraphs 4.a and 11.a above that all SSR be delivered to ECUA, the City is limited to delivering 3,000 tons of SSR per year, absent subsequent written agreement between the Parties pursuant to the notice provisions set forth in paragraph 13, below.

12. Events of Default. A Party shall be in default of this Agreement only upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from receipt of written notice of default from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to the expiration of said thirty (30) days (ten (10) days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided, however, that such Party shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such Party is using good faith and commercially reasonable and diligent efforts to rectify the particulars specified in the notice of default.

13. Notices. All notices called for under this Agreement, other than those called for under paragraph 4.b, above, shall be made in writing and delivered by hand, certified mail with return receipt, or overnight courier, as follows:

To City of Pensacola:

Keith Wilkins, Deputy City Administrator

City of Pensacola
222 West Main Street
Pensacola, FL 32502
E-mail: kwilkins@cityofpensacola.com
Telephone: (850) 435-1696

With a copy to:

John Pittman, Sanitation Services/Fleet Management Director
City of Pensacola
100 West Leonard Street
Pensacola, Florida 32501
E-mail: jpittman@cityofpensacola.com
Telephone: (850) 435-1894

To ECUA:

Randy Rudd
Deputy Executive Director of Shared Services
Emerald Coast Utilities Authority
9255 Sturdevant Street
Pensacola, Florida 32514

14. Force Majeure. In the event that performance by the Parties of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such Party, whether such occurrence be an act of God or any other occurrence whatsoever beyond the reasonable control of such Party, including a change in environmental law or regulation rendering performance impractical or impossible, then such Party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

15. ECUA's Right to Refuse to Accept SSR and Parties Right to Cancel for Convenience. Notwithstanding the provisions of paragraph 4, above, in the event that the operator of the ECUA MRF declares a Shutdown, ECUA and the ECUA MRF shall be under no obligation to accept any SSR from the City through the duration of that Shutdown. Additionally, in the event of a Shutdown, the City may dispose of its SSR as it deems fit for the duration of that Shutdown, and the City is not obligated to reimburse ECUA and/or the operator of the ECUA MRF, if any, for lost revenue associated

therewith. Moreover, in the absence of a Shutdown, ECUA, acting through its Executive Director, may cancel this Agreement for convenience on one week's written notice notwithstanding the provisions of paragraph 3 above.

16. Records. The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a Party fails to abide by the provisions of Chapter 119, Florida Statutes, the other Party shall give written notice of the alleged violation of Chapter 119 and seven (7) calendar days to cure the alleged violation. If the alleged violation has not been cured at the end of that time period, then the party giving such notice may terminate this Agreement for cause. ECUA further agrees to:

a. Keep and maintain public records required by the City to perform services under this Agreement.

b. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law during the term of this Agreement and following completion of the Agreement if ECUA does not transfer the records to the City.

d. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of ECUA or keep and maintain public records required by the City to perform the services under this Agreement. If ECUA transfers all public records to the City upon completion of the Agreement, ECUA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ECUA keeps and maintains public records upon completion of the Agreement, ECUA shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information

technology systems of the City.

IF ECUA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO ECUA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY CLERK, 222 WEST MAIN STREET, PENSACOLA, FLORIDA 32502, PHONE: (850) 435-1715, publicrecords@cityofpensacola.com.

17. Assignment. This Agreement or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by any Party, without the prior written consent of all other Parties.

18. Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the Parties stipulate that venue for any matter which is the subject of this Agreement shall lie in Escambia County, Florida.

20. Dispute Resolution. The Parties agree that in the event of any dispute or claim relating to, arising out of, or interpreting this Agreement arises, all such disputes or claims shall be fully, finally, and exclusively decided by a State court of competent jurisdiction sitting in Escambia County, Florida. Additionally, the Parties knowingly and willingly hereby waive their respective rights to have any such disputes or claims decided by a jury; instead, their sole relief shall be via a bench trial in which the judge alone sits as the finder of fact.

21. Interpretation. For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings are used in accordance with such recognized meanings.

References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

a. If any Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the Party shall immediately notify all other Parties and request clarification of this Agreement.

b. This Agreement shall not be more strictly construed against any party hereto by reason of the fact that one Party may have drafted or prepared any or all of the terms and provisions hereof.

22. Severability. The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision.

23. Further Documents. The parties shall execute and deliver all documents and perform further actions that may reasonably be necessary to effectuate the provisions of this Agreement.

24. No Waiver. The failure of a Party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either Party's right to thereafter enforce the same in accordance with this Agreement.

25. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective

unless contained in a written document executed with the same formality and of equal dignity herewith.

26. Recording. This Agreement shall be filed in the office of the Clerk of the Circuit Court of Escambia County, Florida. The City shall be responsible for such filing.

IN WITNESS WHEREOF, the Parties have executed this Agreement, by and through their duly undersigned and authorized representatives, as of the date and year first written above.

City of Pensacola, Florida, a political subdivision of the State of Florida acting by and through its duly authorized City Council.

By: _____
Grover C. Robinson, IV , Mayor

ATTEST:

By: _____
Ericka L. Burnett, City Clerk

Approved as to Content:

Approved as to Form and Execution:

Keith Wilkins, Deputy City Administrator

Susan Woolf, City Attorney

EMERALD COAST UTILITIES AUTHORITY, a local governmental body, corporate and politic, acting by and through its duly authorized Board.

By: _____
Lois Benson, Chairman

ATTEST:

By: _____
Secretary