

ORDINANCE NO. 8687-35

AN ORDINANCE
APPROVING AN AGREEMENT FOR RECYCLING SERVICES BY AND
BETWEEN THE CITY OF URBANA AND THE COMMUNITY RECYCLING CENTER

WHEREAS, it is desirable and in the best interest of the City of Urbana, Champaign County, Illinois (the "City"), to sell its collected recyclable materials from Urbana residents to the Community Recycling Center (the "Center"), which is currently engaged in the business of recycling.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Agreement for Recycling Services (the "Agreement") by and between the City and the Center, in substantially the form thereof as presented before this meeting, is in all respects approved, and all actions taken and things done by the appropriate officers of the City preliminary to and in connection with the preparation thereof be and are hereby ratified, confirmed and approved.

Section 2. That the Mayor and the City Clerk be and they are hereby authorized and directed to execute and deliver the Agreement for and on behalf of the City. The Agreement as executed and delivered shall be in substantially the form thereof now before this meeting and hereby approved, or with such changes therein as shall be approved by the officers of the City executing it, their execution thereof to constitute their conclusive approval and the City's conclusive approval of any and all changes or revisions therein from the form thereof now before this meeting.

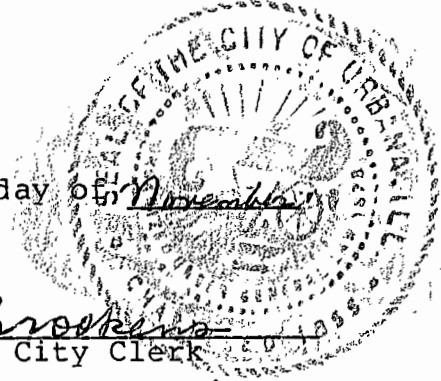
Section 3. That from and after the execution and delivery of the Agreement the officers, attorneys, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute and deliver all such documents, certificates and instruments as may be desirable or necessary to carry out, effect and comply with the provisions of the Agreement as executed and delivered. The Mayor and City Clerk, for and on behalf of the City, be and they are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Agreement by the other party thereto, the performance of all obligation of the City under and pursuant to the Agreement and the performance of all acts and things of whatever nature necessary to fully effect and carry out the provisions of the Agreement.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

1986.

PASSED by the City Council this 3rd day of November

Ruth S. Brookens
Ruth S. Brookens, City Clerk



1986.

APPROVED by the Mayor this 14th day of November.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 8687-35 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk

November 5, 1986
Date



AGREEMENT
FOR RECYCLING SERVICES

By and Between the

CITY OF URBANA, ILLINOIS

and

COMMUNITY RECYCLING CENTER,
an Illinois not-for-profit corporation

Dated as of November 1, 1986

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AGREEMENT FOR RECYCLING SERVICES

THIS AGREEMENT, dated as of November 1, 1986 for Recycling Services (the "Agreement"), by and between the City of Urbana, a municipal corporation, having its offices at 400 South Vine Street, Urbana, Illinois (hereinafter referred to as the "City") and COMMUNITY RECYCLING CENTER, a not-for-profit corporation, organized under the laws of the State of Illinois, with offices at 720 North Market Street, Champaign, Illinois (hereinafter referred to as the "Center"):

WHEREAS, the City has resolved to institute a new public service for Urbana residents by collecting recyclable materials;

WHEREAS, the Center is currently engaged in the business of recycling, and the City desires to sell its collected recyclable materials to the Center; and

WHEREAS, the Illinois Constitution (Section 10, entitled "Intergovernmental Cooperation," of Article VII, entitled "Local Government") and the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1985, ch. 127, par. 741 et seq.) provide constitutional and statutory authority for the City and the Center to agree concerning recycling services by entering into and performing the terms and provisions of this Agreement; and

WHEREAS, the City, the City of Champaign ("Champaign"), Illinois and the County of Champaign, Illinois (the "County") have entered into an Agreement and General Plan for Development of Solid Waste Disposal Facilities and Programs and the Creation of the Intergovernmental Solid Waste Disposal Association [the "Association"] dated July 22, 1986 (the "Association Agreement") in connection with which the City, Champaign and the County have agreed to undertake independent recycling activities and programs.

NOW, THEREFORE, in consideration of the agreements, covenants, representations, warranties and undertakings made and contained herein, including in the recitals above set forth, the

City and the Center hereby agree, covenant, represent, warrant and undertake, as follows:

ARTICLE I

Definitions and Representations

Section 1.1. General Definitions. Unless the context clearly requires otherwise, certain words, terms and phrases used in this Agreement shall have the meanings given them from place to place herein, including as defined above in the recitals hereto, and the meanings given in this Article I, and in this Section 1.1, as follows:

"Agreement" means this Agreement for Recycling Services, including as it may be supplemented and amended.

"Facilities" or "facilities" means the buildings, equipment and other structures and appurtenances constituting the Center's recycling and processing system principally located at or near 720-736 North Market Street in Champaign, Illinois.

"Recycling", "recycled" or words of similar tenor and import mean a process in which solid and liquid waste materials are collected and processed into either their original or a changed form for other applications and use.

"Recyclable materials" means those items of solid or liquid waste, including but not limited to those described in Article III hereof and in Exhibit A hereto, to be collected for resale, re-utilization, or other commercial disposition.

"Secondary materials market" means potential consumers, including individuals and businesses, that will purchase the recyclable or recycled materials which are received or collected and processed pursuant to this Agreement.

"Market Price" means the unit price, by weight or volume, paid to the Center from the secondary materials market for the resale of recycled materials collected pursuant to this Agreement.

Section 1.2. Certain Words Used Herein. The words "hereof," "herein," "hereunder," "hereto," and other words of similar tenor and import refer to this Agreement as a whole and not solely to the particular portion thereof in which any such word is used. The defined terms used herein include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

Section 1.3. References to Articles, Etc. References to articles, sections, paragraphs and other subdivisions of this Agreement are to the designated articles, sections, paragraphs and other subdivisions of this Agreement as originally executed.

Section 1.4. Headings. The headings of this Agreement, and the Table of Contents, are for convenience only and shall not define or limit the provisions hereof.

Section 1.5. Representations and Warranties. The City and Center each make certain representations, warranties and covenants concerning this Agreement, as follows:

(a) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the terms and conditions of this Agreement, conflicts with or results in a breach of any of the terms, conditions or provisions of any agreement or instrument to which each is now respectively a party or by which each is respectively bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien whatsoever upon any of their respective properties under the terms of any such instrument or agreement.

(b) The execution of this Agreement and performance hereunder have been duly authorized by each of the parties hereto by appropriate and binding action of the City Council of the City and by the Governing Council of the Center.

(c) No approval, consent or withholding of objection on the part of any court or regulatory body, federal, state or local, not previously obtained, is required in connection with the execution or delivery of or compliance by each with the terms and provisions and full and timely performance of this Agreement, and the consummation and full and timely performance of the agreements, covenants, representations, warranties and undertakings set forth herein. The Center shall obtain all permits and other approvals in connection with its obligations under this Agreement.

(d) Other than ordinarily incidental litigation, there are no actions at law or in equity pending or threatened against them, respectively, and there are no proceedings of any kind or nature, at law or in equity or before or by any federal, state or local governmental administrative authority or agency which are pending or, to their knowledge, respectively, threatened, which affect or question their respective right to own and operate the respective properties or conduct their respective businesses in the manner in which the same are now operated and conducted, or to do or perform any of the acts and things contemplated to be done and performed by them, respectively, under this Agreement.

[End of Article I]

ARTICLE II

Recycling Operations

Section 2.1. Materials. The Center shall continue and expand programs for the recycling of glass, aluminum cans, bimetal cans, tinplate cans, newspapers, cardboard, high-grade paper, used motor oil and other reasonably recyclable materials.

Section 2.2. Expansion. The Center may include in its recycling operations other recyclable materials (e.g., plastics, and rubber) as markets therefor may develop. Any such expansion to include other recyclable materials shall be in the sole discretion of the Center, so long as stated performance goals are met, the quality of other services hereunder is not thereby diminished and no other event of default is existing and is continuing under this Agreement.

Section 2.3. Location. Subject to review, as part of its recycling operations, the Center shall locate, place, install, and construct drop-off containers at the locations throughout the City shown on Exhibit A to this Agreement. The City and the Center may agree from time to time on additions to and deletions from the locations in such Exhibit A; and the City and the Center shall not unreasonably withhold their agreement in that connection. The Center shall locate the drop-off containers in places at such locations convenient for the public to deposit recyclable materials. The Center shall advise the City in a timely manner of the specific locations of the drop-off containers.

Section 2.4. Container Construction and Sites. The Center shall use drop-off containers constructed to withstand the elements of nature and to discourage vandalism of the recyclable materials within them. The City reserves the right to approve the construction and design of all drop-off containers located by the Center within the corporate limits of the City. Such construction and design approval will not be unreasonably withheld.

The Center shall screen, landscape, or otherwise provide aesthetic features in connection with the sites where drop-off containers are located as the City approves. The City hereby approves the design and construction of the existing drop-off containers and the site aesthetics where drop-off containers are now located.

Section 2.5. Maintenance. The Center shall remove the materials deposited in the drop-off containers at the times and in the manner so that areas around the containers are litter-free, have an aesthetic appearance and remain structurally sound.

Section 2.6. Other and Additional Recycling Activities. Other recycling activities to be continued or undertaken by the Center shall include the following:

- (a) Buy-Back Program: A program of purchasing recyclable materials from the public during stated hours at its facilities.
- (b) Commercial Programs: Scheduled collections from businesses and other high-volume generators of recyclable materials.

The Center may operate additional recycling activities other than the drop-off containers provided for in this Article II and (a) and (b) above. Sales of materials in connection with any other or additional recycling activities shall not be subject to the payment provisions of Section 5.4 hereof.

Section 2.7. Processing. The Center shall process recyclable materials to render such materials suitable for resale, re-utilization, or other commercial disposition pursuant to this Agreement. The Center shall use its best efforts to effect and expand markets for recycled materials. The Center shall at all times strive to maximize processing efficiency and sales in the secondary materials market.

Section 2.8. Goals and Plans. On or before September 15 of each year that this Agreement is in effect, the City shall submit to the Center a description of its recycling activities and programs for the next calendar year, together with related assumptions and projections. On December 31 of each year that this Agreement is in effect, commencing December 31, 1986, the Center shall submit in writing to the City the Center's secondary materials marketing goals and plans for the next calendar year for the processing and disposition of recyclable material. Such goals and plans shall state the assumptions and projections upon which the Center relies, and shall be supplemented with such further explanation and clarification as the City reasonably requests. Such goals and plans shall include reference to and generally implement the Community Recycling Center Review of Management Plan and Accounting Practices dated August 11, 1986 prepared by McGladrey, Hendrikson & Pullen and the Community Recycling Center Operational Plan dated May 1986 prepared by Resource Conservation Consultants.

Section 2.9. Recycling Representative. The City and the Center each shall designate a recycling representative to have primary responsibility and authority in connection with this Agreement and who shall serve as the liaison and principal contact. Unless otherwise provided and with notice to the other party, the recycling representative for the City shall be its Public Works Director and for the Center shall be its Director. The recycling representative shall have the power and authority with respect to the matters addressed in Section 7.2 of this Agreement. The Center's Director when invited shall attend the City's project and operations meetings related to the subject matter of this Agreement; and the City's recycling representative when invited shall attend the Center's project and operations meeting related to the subject matter of this Agreement.

[End of Article II]

ARTICLE III

Education and Promotion

Section 3.1. Program. The Center shall continue its public education program to include, but not be limited to, the following:

(a) to educate the public about the problems, opportunities and benefits in connection with the recycling of solid and liquid wastes; and

(b) to increase public awareness of and to encourage the use of the recycling and other services provided by the Center; and

(c) to encourage participation in volunteer work in connection with the Center's recycling and other activities; and

(d) to promote participation by City residents in the City's curbside collection program.

Section 3.2. Staffing, Etc. To ensure the continuation of an effective public education program pursuant to this Agreement, the Center shall employ a competent and effective full-time staff person for such purpose. The Center's public education program shall specify the methods to be used including for making use of schools, media, community groups, and service clubs in the City. The Center's public education program shall be submitted to the City as a part of its written plans and goals described above in Section 2.8. It is a goal of the Center's public education program to achieve maximum awareness of and participation in the recycling activities and programs available in the City, including those of the Center and of the City.

Section 3.3. Specific Education and Promotion Services. To assist the City in the specific promotion of the City's curbside collection program, the Center annually shall provide at a minimum certain services for the City, as follows:

(a) design and maintenance of an "in the schools" educational and promotional program distinctly targeted at two levels of primary education students and one level of secondary education students.

(b) design and maintenance of an adult educational and promotional program, including presentations at community events and civic groups.

(c) assistance to the City in preparing educational and promotional materials for its programs and activities.

(d) application of a minimum of 260 hours per year by the staff person for public education employed by the Center for educational and promotional activities and services.

The City will pay all production costs of educational and promotional materials specifically promoting the City's curbside collection programs and activities. Such production costs shall include printing, graphic materials, audio-visual materials, props, media advertising and the like. Prior to the production of any such materials, the written approval of cost expenditures shall be obtained from the City. Such production costs are not included in the Operating and Promotion Fees described in Section 5.2 below.

[End of Article III]

ARTICLE IV

Reports and Audits

Section 4.1. Generally. The Center annually shall provide the City with a reasonably detailed written report related to its performance, programs and activities in connection with this Agreement for the prior calendar year. The report shall be submitted to the City by January 31 of each year during which this Agreement is in effect and within 31 days of the termination of this Agreement if other than on December 31 of a year. The report shall include progress achieved in attaining the goals and plans as set forth in Section 2.8, and the progress achieved in operation, education and expansion of Center's programs, activities and services, status of the Center's finances generally, and levels of recyclable materials processed.

Section 4.2. Annual Report. The annual report shall address in reasonable detail, but shall not be limited to, the following:

(a) increased collection and material handling and processing capacities, equipment purchases and amounts of recyclable materials collected, sold or otherwise disposed of; and

(b) market trends in pricing and demand for recyclable materials; and

(c) the Center's performance and activities in the implementation and operation of the public education program under Article III hereof; and

(d) the Center's capital outlays on an item by item basis.

The annual report shall be supplemented as the City reasonably requests.

Section 4.3. Audit and Financial Statements. The Center shall annually provide the City with a copy of its audit for its immediately preceding fiscal year. Such annual audit shall be performed in accordance with generally accepted accounting principles by a certified public accountant and shall be submitted to the City within three months of the end of each of the Center's fiscal years. Prior to the execution of this Agreement the Center shall provide the City with a current financial statement listing all debts and creditors and whether or not there is any default in connection therewith. Prior to incurring any new debt exceeding \$20,000 outstanding in the aggregate for any single creditor the Center shall give reasonable notice to the City.

Section 4.4. Bonds and Insurance. The Center shall bond all of its officers and employees who handle moneys and funds and accounts in an amount equal to the maximum amounts of such moneys, funds and accounts but in any event not less than \$50,000. The Center shall insure, or cause to be insured, its facilities in an amount at least equal to their replacement value (or such maximum amount less than replacement value as may be reasonably available or as may be approved by the City's recycling representative) and shall insure itself and its officers and employees for general liabilities and for other particular liabilities to which the business of the Center and like businesses are generally and uniquely subject. Copies of all such policies shall be filed with the City and shall not be cancelled without notice by the insurer to the City. Insurance will be effected with responsible companies and in amounts of coverage that businesses similar to the Center carry but in an amount of coverage not less than presently carried.

[End of Article IV]

ARTICLE V

Payments, Fees, Disbursement, Operations, Etc.

Section 5.1. Generally. As set forth in this Article V, the City shall pay to the Center certain "Operating and Promotion Fees" and "Capitalization Payments", and the Center shall pay to the City "Material Purchase Payments".

Section 5.2. Operating and Promotion Fees. Pursuant to the disbursement provisions of Section 5.5. hereof, the City shall make available for payment to the Center for the recycling activities and programs on its part under this Agreement, including educational and promotional services, \$58,000 per year for five (5) years, \$14,500 upon the execution and delivery hereof (subject to the provisions of Section 5.18 hereof) and thereafter in quarterly allotments of \$14,500 each on March 1, June 1, September 1 and December 1 of each year while this Agreement is in effect, commencing as of December 1, 1986. An appropriate proration shall be made in connection with any partial quarter. Such allotments constitute the Operating and Promotion Fees mentioned above in Section 5.1.

Out of the proceeds derived by the Center from the Operating and Promotion Fees the Center shall create and establish a repair and replacement fund (the "Repair and Replacement Fund"), which shall be kept and maintained by the Center separate and apart from all other funds and accounts of the Center. From each of the quarterly allotments of Operating and Promotion Fees received by the Center from the City, commencing March 1, 1987, the Center shall deposit into or credit to the Repair and Replacement Fund the sum of \$1,500.00. The moneys in the Repair and Replacement Fund shall be applied and expended, if at all, as follows:

(a) Up to 1/3 of such moneys shall be applied and expended for the repair and/or replacement of the Center's

facilities as the Center in its reasonable judgment shall decide.

(b) Up to 2/3 of such moneys shall be applied and expended for the repair and replacement of the Center's facilities in the manner and at the times and subject to the terms and conditions as the City shall in writing approve, which approval shall not be unreasonably withheld.

The Center shall account to the City in reasonable detail as to the application and expenditure of the Repair and Replacement Fund. The moneys in the Repair and Replacement Fund may be commingled with any similar Repair and Replacement Fund created and established pursuant to recycling agreements between the Center and the County and/or Champaign which also permit such commingling, and any moneys applied and expended as in paragraphs (a) and (b) above provided shall be considered to have been applied and expended in proportion to the aggregate amounts deposited into or credited to the Repair and Replacement Fund without regard to when any such moneys were deposited into or credited to the Repair and Replacement Fund.

The Center covenants and agrees that it will maintain its facilities in good repair and condition and will make all needful repairs from time to time and replace all worn out equipment and other facilities necessary to its operations. The foregoing shall not require the Center to repair or replace any obsolete equipment or other facilities.

Section 5.3. Capitalization Payments. Pursuant to the disbursement provisions of Section 5.5. hereof, the City shall make available for payment to the Center the total sum of \$59,740.00 to be so made available in three (3) serial allotments of \$18,060, \$20,840 and \$20,840. The Center shall combine these payments with payments or allotments from other public agencies, presently contemplated to be the City, Champaign and the County, to purchase required processing equipment and improvements to

other facilities for handling recyclable materials collected from the City's and such other public agencies' curbside collection programs. These allotments shall be available as of September 1, 1986 (or such later date as is described in Section 5.18 hereof) and on July 1, 1987 and July 1, 1988, and constitute the Capitalization Payments mentioned above in Section 5.1. Any equipment purchased by the Center using the proceeds of Capitalization Payments shall be owned by or titled in the name of the Center.

Section 5.4. Material Purchase Payments. On a quarterly basis (January 15, April 15, July 15 and October 15 of each year), commencing January 15, 1987, the Center shall pay to the City the Material Purchase Payments mentioned above in Section 5.1 for the purchase of recyclable materials delivered to the Center's facilities by the City from the City's curbside collection program described in Article III hereof. The material purchase payments for each category of recyclable materials described in Exhibit B to this Agreement shall be computed as follows:

Material Purchase Payment Equals Tons of Each Category of Acceptable (under the terms and provisions of Section 5.15 hereof) Recyclable Material Multiplied by the Market Price Therefor Upon Resale Less the Cost of Processing the Material Per Ton for Each Such Category of Recyclable Material.

In no case, however, shall such material purchase payment be less than the minimum material purchase payment per ton for each category of recyclable specified material in Exhibit B. Including as required by Section 5.12 hereof, the Center shall, upon request of the City, produce all records and accounts concerning resale of recyclable material in the secondary materials market. In the event that the market price received by the Center exceeds the total of the cost of processing per ton plus the minimum material purchase payment per ton, as set forth in Exhibit B (from the curb side collection program only), the

Center shall pay to the City 50% of such excess in addition to the applicable minimum material purchase payments. Reference herein to "ton" shall mean and include any other applicable unit of measure as may be appropriate in connection with the recyclable material.

The City and the Center from time to time may agree in connection with other recyclable materials to add to Exhibit B to this Agreement.

Section 5.5. Disbursement of Payments to Center.
Disbursement of the Operating and Promotion Fees and of the Capitalization Payments by the City to the Center under Section 5.2 and 5.3 of this Agreement shall be in accordance with this Section 5.5. Such disbursement shall be made to the person or persons stated to be entitled to such payment, including to the Center in anticipation of the expenditure and application of funds by the Center as the City in writing approves, which approval shall not be unreasonably withheld, or in the event it shall have advanced funds in anticipation of reimbursement hereunder, in a requisition therefor, in substantially the form thereof set forth in Exhibit C hereto, submitted by the Center to the City. Any requisition shall be signed by the Center's recycling representative, co-signed by the chair of its Governing Council, and shall (i) designate the name(s) and address(es) of the person(s) paid or to be paid; (ii) state the amount(s) due and owing or paid; and (iii) certify that the amount(s) to be paid is (are) for an appropriate purpose under this Agreement and has (have) not been the subject of a prior requisition. Upon request of the City the Center shall accompany with or later attach to any requisition copies of such invoices, receipts, cancelled checks, payroll records or other information as the City may reasonably require to evidence the incurring or paying of any item which is the subject of a requisition. The submission of any requisition shall be in and of itself a certification that no event of default or default is existing at

the time of delivery under this Agreement and that to the knowledge of the Center there is no basis for an event of default or default under this Agreement. Any requisition submitted for Capitalization Payments under Section 5.3 of this Agreement shall be accompanied by executed financing statements sufficient to grant the City the appropriate security interest in connection therewith as described in Section 5.6 hereof. The Local Government Prompt Payment Act is hereby expressly waived by the Center in connection with any amounts or payments to be received by it under this Agreement.

Subject to approval by the City, the Center shall requisition funds under this Section 5.5 at such times and in such amounts that Operating and Promotion Fees and Capitalization Payments (howsoever styled) under similar agreements with Champaign and the County, if any, are drawn in substantially equal or ratable amounts. Unless otherwise accepted, requisitions hereunder shall be submitted no more frequently than at one time per month. With respect to the administration and coordination of disbursements and requisitions under this Section 5.5, the City's recycling representative may enter into an appropriate agreement therefor with the Association.

Notwithstanding the foregoing provisions of this Section 5.5, specifically including without the need to provide requisitions as above in this Section 5.5 provided, the Center shall be allowed to apply the proceeds of Operating and Promotion Fees under Section 5.2 hereof to the payment for certain limited purposes, as follows: salaries, wages, payroll taxes, cost of goods for the buy-back program, insurance, rent, utilities, hauling and freight costs, landfill costs, repair and maintenance of facilities, postage, legal and accounting. In the event the Center should decide to apply and expend such proceeds for any purpose other than those specified in the preceding sentence, the Center shall submit to the City the requisitions as above in this Section 5.5 provided and have them approved by the City in

advance of the actual application and expenditure of funds for such other purposes.

Section 5.6. Security Agreement. This Agreement constitutes a security agreement and evidences the existence of a security interest in certain property described in this Section 5.6 under the Illinois Commercial Code -- Secured Transactions ("UCC Article 9"). To secure its full and timely performance of its obligations under this Agreement the Center hereby grants to the City a security interest in and to certain property, as follows:

a. The property described in Section 5.5 of this Agreement paid for out of the Capitalization Payments and the Repair and Replacement Fund.

b. Personal property paid for out of the Operating and Promotion Fees.

c. All Center receivables, inventories, investments, accounts, funds and commercial paper.

d. All recyclable and other materials at the Center's facilities.

e. All equipment of the Center of any kind wherever located other than as described in a. above.

f. The lease of the land and buildings constituting the Center's facilities at or near 720 North Market Street in Champaign, Illinois.

The security interest in the property described in (a) above shall be a first security interest, and the security interest in the property described above in (b) - (f), inclusive, shall be and is hereby declared to be second, junior and subordinate to any other security interest therein now existing granted in respect of any loan for borrowed money from a financial institution that is duly perfected in the manner required by UCC Article 9. The priorities described in the preceding sentence may be altered as approved by the City's recycling representative in connection with any financing, loan or security agreement

entered into by the Center for the purpose of acquiring and installing equipment and other facilities by the Center to effect the objects and purposes of this Agreement. Such alteration of priorities shall be, if at all, with respect to such facilities with such priorities and in the manner and according to the terms and conditions approved by the City's recycling representative.

It is anticipated that Champaign and the County, pursuant to and in accordance with the Association Agreement, will be entering into recycling agreements with the Center similar to this Agreement (the "Champaign recycling agreement" or the "County recycling agreement"). Champaign and/or the County will be securing the Center's obligations under such recycling agreements in a manner similar to this Section 5.6 in respect of a pledge of property described substantially as above in this Section 5.6. In connection with such security interests in the property above described in (a) - (f), inclusive, the Center covenants and agrees, and the City concurs, that the City, Champaign and the County shall have an equal parity security interest therein in proportion to the respective amounts due them in connection with their respective Champaign or County recycling agreement, including this Agreement, on the condition that Champaign and the County recycling agreements each contain a similar parity provision and each agrees to provide the City with notice of any action to foreclose such security interest. The City hereby covenants and agrees to provide Champaign and the County with similar notice.

Section 5.7. Ownership of Materials. The materials collected in connection with the City's curbside collection program described in Article III hereof, but only to the extent that the City lawfully may so provide, shall become the property of the Center at the time that such materials are unloaded into collection bins or otherwise delivered at the Center's facilities. The City makes no warranty, express or implied, in connection with the title or ownership of any materials.

Section 5.8. Hours of Center's Operation. The City will provide collection vehicles in connection with its curbside collection program. The Center shall maintain staffing and equipment necessary and sufficient to service the City's collection vehicles for its curbside collection program between 8:00 a.m. and 4:00 p.m., Monday through Friday, and, in limited cases from time to time, upon notification by 3:30 p.m. on any such day, to extend its hours to 6:00 p.m. The Center shall maintain telephone service at its main facility on Market Street. The Center and the City from time to time may agree on adjustments in the Center's hours of operation.

Section 5.9. Service on Holidays. The Center is not required to be open on certain holidays, as follows:

- a. New Year's Day
- b. Memorial Day
- c. Independence Day
- d. Labor Day
- e. Thanksgiving Day
- f. Christmas Day
- g. Veterans Day

The Center and the City from time to time may agree on adjustments in the schedule of holidays set forth above.

Section 5.10. Minimum Service Time. All materials and collection bins delivered to the Center by the City crews shall be removed from the City collection vehicles by the Center's personnel and assisted by the City's crews. Within thirty (30) minutes of the deposit of City collection bins from collection vehicles at the Center's facility, the Center shall perform certain services, as follows:

- a. Weigh bins removed from collection vehicles.
- b. Weigh collection vehicles driven by collection crew containing newspaper (gross and tare).

- c. Record data pursuant to Section 5.12 below.

Section 5.11. Center Facilities. The Center shall provide certain facilities as follows:

- a. Accessible unloading areas for bins and collection vehicles.
- b. Accessible loading area for City collection crews to load empty bins and for storage of such bins.
- c. Sufficient space for trailer storage during unloading of collection vehicles and storage space for a second trailer.
- d. Access to the Center's bathroom facilities for the City's collection crews.

At its election the City will provide, install and maintain a two-way radio system for communication between the Center's facilities and the City's collection crews. The Center shall provide personnel to receive such radio communications.

Section 5.12. Data Collection. At a minimum, the Center shall collect certain data each day for each collection vehicle and/or bin delivering solid waste at the Center's facilities, as follows:

- a. Arrival and departure time.
- b. Number and gross weight of each bin.
- c. Gross and tare weights of each truck.
- d. Individual weight totals by bin and vehicle load.
- e. Material quality comments (e.g. wet newspapers, requiring adjustments for quality).

The City shall deliver to the Center, and the Center shall weigh, each bin before it is placed in service to establish a tare weight. On a reasonable basis, the City or the Center may request and obtain a new tare weight for any bin. Each bin shall be identified to the City and numbered. Data required by Section 5.12 (d) shall be summarized in a monthly report to the City.

Section 5.13. Records and Scales Certification. The Center shall keep and maintain appropriate books, records, and accounts, in accordance with generally accepted accounting principles, in connection with the services to be performed by the Center under this Agreement. At least annually, and not more frequently than quarterly as the City may request, the Center shall provide the City with copies of the Center's audited and/or unaudited financial statements, which in any case shall be prepared to the fullest extent possible in accordance with generally accepted accounting principles. In addition, all of the foregoing records shall be available for inspection and copying by a representative of the City during the Center's business hours, with reasonable notice to the Center. The Center shall retain until all data required by this Agreement for at least two years after the annual audit with respect to which any such data was obtained. All weighing devices used by the Center shall be certified by the appropriate certifying agency, presently the Illinois Department of Agriculture.

Section 5.14. Weighing of Cans. The Center shall sort cans based upon metal content into tinplate, bimetal and aluminum. One week in each month cans from each City collection route will be separately sorted and weighed to determine the percentage by weight of each type of metal. Such percentages when determined shall be applied to compute the weight of each metal contained in any container received by the Center of mixed metal cans for that month. The City will advise the Center of any changes in collection routes in order that appropriate adjustments in such percentages could or might be made.

Section 5.15. Materials to be Handled. The Center shall accept all materials picked up by the City's collection crews, including small amounts of nonrecyclable items. A waste container shall be available at all times at the Center's facilities to hold such nonrecyclable materials. Unless otherwise in writing agreed, the City shall limit its recyclable

collections to, and the Center shall only be required to accept, the following:

- a. Old newspapers, reasonably dry, containing an amount or percentage of outthrows not to exceed such amount or percentage based upon industry standards in the secondary materials market.
- b. Mixed tinplate, bimetal and aluminum food and beverage cans, not requiring cleaning or removal of labels.
- c. Glass bottles (not less than 85% unbroken), not requiring cleaning.

Section 5.16. Changes in Collection and Processing.

The Center shall not substantially change the manner and methods in which it processes recyclable materials without prior approval of the City. The City shall not substantially change the manner and methods in which it collects recyclable materials without the approval of the Center.

Section 5.17. Equipment Ownership.

In the event of a default by the City or the Center, as the case may be, as defined in Article VI hereof, title to the equipment described and paid for according to Section 5.3 hereof shall vest in the City or the Center according to Article VI hereof.

Section 5.18. Contingencies and Transition Agreements.

The City acknowledges and understands that the Center's ability to perform the terms and provisions of this Agreement requires the Center to obtain appropriate financing in the private sector in the approximate principal amount of \$110,000.00. The Center covenants and agrees to diligently proceed to obtain such financing. If for any reason the Center is not able to obtain such financing on terms and conditions satisfactory to it, and the City has not received appropriate written notice thereof from the Center and the lender, on or before December 19, 1986, this

Agreement shall terminate.

Notwithstanding Section 5.2 hereof concerning Operating and Promotion Fees, the \$14,500 to be paid to the Center on the date of the execution and delivery hereof shall be applied by the Center as though such funds were Capitalization Payments under Section 5.3 hereof for a forklift and/or such other equipment as the City approves. In the event the above described private sector financing is not obtained as herein described on or before the December 19, 1986 deadline, the Center at its election shall either pay to the City the amount or amounts paid to it up to the \$14,500 payment or convey to the City the forklift and other equipment purchased from the above \$14,500 payment. The City shall have, and is hereby granted by the Center, a first security interest in the forklift and other equipment purchased from the \$14,500 payment to secure the Center's obligations described in the preceding sentence.

Notwithstanding Sections 5.2 and 5.3 of this Agreement, the allotment and payment due or accruing as of December 1, 1986 under Section 5.2 hereof and September 1, 1986 under Section 5.3 hereof, and thereafter due or accruing, shall not be paid or allotted for disbursement until the private sector financing described in this Section 5.18 is available for disbursement to the Center.

Up to the fullest extent that the Center's facilities are capable of receiving, handling, processing and marketing materials under this Agreement, during the period commencing with the full execution and delivery of this Agreement until at least December 19, 1986, unless the financing contingency of this Section 5.18 is satisfied, the Center shall receive, handle, process, and market materials in the manner contemplated by this Agreement. The City further acknowledges and recognizes that the Center shall have until sixty (60) days after obtaining its private sector financing as described in this Section 5.18 to have its facilities capable of receiving, handling, processing, and marketing materials in the manner and to the extent provided for, described in and contemplated by this Agreement.

[End of Article V]

ARTICLE VI

Default and Event of Default

Section 6.1. Default by Center. If any one or more of the events described in this Section 6.1 occur, it is hereby defined and declared to be and to constitute a "default" or an "event of default." A default or an event of default shall be the events as follows:

(a) A default for 5 business days of the Center in the due and punctual payment of any amounts constituting Material Purchase Payments due by the Center to the City under Section 5.4 hereof after notice of such default given by the City to the Center.

(b) Default by the Center in connection with the receipt and acceptance for the processing of materials under and pursuant to this Agreement.

(c) A default in the performance or observance of any other of the material agreements, covenants, representations, warranties or undertakings on the part of the Center in this Agreement made and contained and continuing more than 30 days after receipt by the Center from the City of written notice specifying such default and requesting that it be corrected. If such default cannot be corrected in such 30-day period, it shall not constitute a default or event of default if corrective action approved by the City is instituted by the Center within such 30-day period and diligently pursued until the default is corrected, but in any event corrected within 60 days of the notice of default unless the City in writing shall extend such period.

(d) A default or an event of default on the part of the Center shall have occurred and be continuing under the Champaign recycling agreement or under the County recycling agreement.

(e) A petition shall be filed by or on behalf of the Center under the bankruptcy laws of the United States and

shall not have been discharged within 60 days of the filing thereof.

(f) A material default or event of default on the part of the Center shall occur and be continuing in connection with any loan agreement, security agreement, note, bond, mortgage, indenture or other loan document or instrument in respect of borrowed money, subject to the right of the Center to contest any such default or event of default.

(g) No lease agreement approved by the City is in effect with Champaign concerning the Center's land and building facilities at or near 720 North Market in Champaign, Illinois or at another appropriate location and on such terms as approved by the City, which approval shall not be unreasonably withheld.

The foregoing provisions of this Section 6.1 are subject to the following limitation: If by reason of force majeure the Center is unable in whole or in part to carry out the obligations on its part contained in this Agreement, except under subsection (a) above, the Center shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, as the City in writing approves as such, which approval shall not be unreasonably withheld, as follows: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts, no market exists or a materially and substantially reduced market exists for recyclable materials as contemplated by this Agreement, restraint of government and of utilities; or any other similar cause or event not reasonably within the control of the Center. The Center agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Center from carrying out its representations, undertakings, and agreements, provided that the settlement of strikes, lockouts and

other industrial disturbances shall be entirely within the discretion of the Center, and the Center shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing part or parties when such course is in the judgment of the Center unfavorable to the Center. The Center shall advise the City at the earliest possible moment concerning any events constituting a force majeure hereunder. During the time of any force majeure, the City shall prorata reduce disbursements to the Center of the Operation and Promotion Fees under Section 5.2 hereof to the extent in the City's reasonable judgment, based upon the reduction in the tonnage of material received and processed by the Center, that the Center's performance under this Agreement is reduced, and similarly the Center shall prorata repay any disbursements so made.

Section 6.2. Default by City. In the event the City fails to perform any of its material obligations under this Agreement, then the Center, at its option in writing may declare such failure to be a default or an event of default by the City hereunder. The City shall have such corrective rights in connection with such a declaration of default as the Center has under Section 6.1(c) above. In the case where the City is in default under this Agreement and as long as there is no default or event of default existing or continuing on the part of the Center, the City will be required to continue to make the payments required under Section 5.3 hereof concerning Capitalization Payments.

Section 6.3. Rights and Remedies on Default. The rights and remedies of the City and the Center specified in connection with this Agreement shall be in addition to any other rights or remedies available in law, equity or otherwise. Such rights and remedies are cumulative and may be exercised from time to time and as often as the City or the Center shall determine necessary. A waiver in connection with any default or

event of default on the part of the City or the Center shall be limited to the particular event so waived and shall not be deemed to be to waive the same or another default or event of default in the future.

Certain specified rights and remedies in connection with a default or an event of default under this Agreement are as follows:

(a) The Center may declare this Agreement terminated.
(b) The City may declare this Agreement terminated.
(c) The City may foreclose its security interest described in Section 5.6 hereof.

(d) During any correction period under Section 6.1(c) hereof the City may refuse to make any payments or disbursements to or on behalf of the Center under Section 5.5 hereof.

(e) The City, together with Champaign and the County, as their respective interests may appear, may assume the Center's obligation and position under this Agreement.

Section 6.4. Accounting. Upon termination of this Agreement by reason of default by one or both of the parties, and otherwise by separate agreement, each shall render to the other a statement of any amounts to be paid or to be received from the other and the value of any property of either at the Center's facilities or otherwise in which the other has an interest.

[End of Article VI]

ARTICLE VII

Miscellaneous

Section 7.1. Separate Entities. The City and the Center have entered into this Agreement for the purposes of providing services, programs and activities for recycling services and secondary materials markets for the City. The primary purpose of this Agreement is for the City to provide a means of partial financing in order to effect the Center's provision of such services, programs and activities. The Center is an independent contractor in connection with the provision of the services and work described or referred to in this Agreement. The Center hereby agrees to indemnify, defend and save whole and harmless the City in any manner whatsoever (alleged or occurred or which might be alleged or which might have occurred) in connection with or arising out of the occupancy or use of the facilities.

Section 7.2. Amendments, Approvals, Consents, Etc. This Agreement may be amended from time to time, but only in writing duly approved by the the City Council and Mayor of the City and the Governing Council of the Center. Revisions in Exhibits A and B to this Agreement shall not constitute amendments and may be made by the recycling representatives. The City shall designate a recycling representative, and the Center shall designate a recycling representative. Such recycling representative, unless applicable law requires action by the Center's Governing Council or by the City Council and Mayor of the City, shall have the power and authority to make or grant or do all things, requests, demands, approvals, consents, agreements and other actions required or described in this Agreement for and on behalf of the City and the Center, as the case may be. All requests, demands, approvals, consents, agreements and the like under or authorized by this Agreement shall be only in writing, whether or not the context specifies a writing or not.

Such representative shall be designated by the Governing Council of the Center and by the City's Mayor, and by the approval of this Agreement are hereby initially designated as set forth in Section 2.9 above. All connections with respect to this Agreement shall be given by mail or delivery at the addresses and to the persons, as follows:

For the Center:
Community Recycling Center
720 North Market Street
Champaign, Illinois 61820
Attention: Director

For the City:
City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801
Attention: Public Works
Director

Section 7.3. Assignment by Center. The Center shall not assign or otherwise convey, hypothecate, pledge, dispose or alienate all or any part of its interest in this Agreement or in any assets purchased out of the Capitalization Payments under Section 5.3 hereof without the written approval of the City. The City may for any reason not give such approval but shall provide those reasons in writing.

Section 7.4. Term and Renegotiation of Fees. The term of this Agreement and the renegotiations of the fees in Section 5.2. hereof shall be as set forth in this Section 7.4

(a) Subject to the annual renegotiation of the fees and amounts set forth in Section 5.2 and in Schedule B and the locations in Schedule A, this Agreement shall be for a period of approximately sixty (60) months, commencing as of the date of its execution and delivery by the Center and the City and terminating on November 30, 1991. Any extension of the term hereof or any renewal of this Agreement may be executed by a separate agreement or pursuant to the provisions of Section 7.2 hereof concerning amendments.

(b) The fees and amounts in Section 5.2 and in Exhibit A and locations in Schedule B shall be renegotiated on or before January 1, 1988 and on or before January 1 each of the years 1989, 1990 and 1991. In the event renegotiation

does not result in agreement on or before January 1 of such years, such fees and amounts previously in effect shall remain in effect until March 1 of such years while further negotiation occurs. In the event agreement in connection with such negotiation is not reached by the appropriate extended March 1 date such failure to reach agreement shall be deemed to be an event of default by the Center under Section 6.1(c) hereof to which the 30 and 60 day correction provisions thereof do not apply. During such periods of negotiations the City shall make no payments or disbursements under Section 5.2. hereof to or on behalf of the Center. Neither the City nor the Center shall take unreasonable positions nor negotiate in bad faith in connection with the renegotiations contemplated by this subsection (b). The Costs of Processing Per Ton and Minimum Material Purchase Payments Per Ton in Exhibit B to this Agreement shall be renegotiated based upon a number of complex factors including (as is reasonably projected) inflation, consumer price indices, market prices, costs of operation and maintenance, processing efficiency, implementation of goals and plans, scope of services and the like.

Section 7.5. Representation at Meetings of Center's Governing Council. The City shall be entitled to have reasonable notice of and to have a representative appear at all meetings of the Center's Governing Council related to any matter in respect of this Agreement.

Section 7.6. Instruments of Further Assurance. The City and the Center covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, adopted, executed, acknowledged and delivered, such agreements, ordinances, resolutions and other official actions supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring,

transferring, conveying, pledging, assigning and confirming unto the appropriate parties hereto all and singular the rights and revenues covenanted, agreed and pledged hereby; and each covenants and agrees that, except as in this Agreement provided, each has not and will not assign, pledge, encumber or otherwise dispose of any part of the income and revenues herein described, permitted or obligated or of their respective rights under this Agreement other than as herein provided. Without any other direction than provided in this Agreement, the City and the Center hereby duly authorize and direct each of its appropriate officers, attorneys and employees to act as herein provided to timely and fully effect the objects and purposes of this Agreement according to its tenor and import.

Section 7.7. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the City or the Center any legal or equitable right, remedy or claim under or in respect of this Agreement, the terms, agreements, covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the City and of the Center as herein provided, and not otherwise.

Section 7.8. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case or in all cases because it conflicts with any other provision or provisions hereof or any Constitution or statute or rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances or to any other party, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable.

Section 7.9. Assignment by City. The obligations and rights of the City hereunder may be assigned in whole or in part by it without the Center's consent or approval. The City shall notify the Center of such assignment. The Center's rights and obligations hereunder may not be assigned, hypothecated, pledged or alienated in any manner without the City's consent.

Section 7.10. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.11. Laws Governing Agreement. The effect and meanings of this Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State of Illinois.

[End of Article VII]

This Agreement shall become effective upon the full execution hereof.

CITY OF URBANA, ILLINOIS

COMMUNITY RECYCLING CENTER,
An Illinois Not-For-Profit
Corporation

By _____
Mayor

By _____
Chair

(SEAL)

(SEAL)

Attest:

Attest:

Clerk

Secretary

DATE: _____

DATE: _____

EXHIBIT A
Drop-Off Sites

Woodie Alan's, North Broadway Avenue

Lincoln Square Parking Lot

Eagle Food Center, Perkins and Cunningham Avenue

Jerry's IGA, Philo Road

EXHIBIT B
Payments

<u>MATERIAL</u>	<u>COST OF PROCESSING PER TON</u>	<u>MINIMUM MATERIAL PURCHASE PAYMENT PER TON</u>
Newspaper	\$ 25.00	\$ 15.00
Wet Newspaper	\$ 25.50	\$ 8.00
Aluminum Cans	\$180.00	\$520.00
Bimetal Cans	\$ 70.00	\$280.00
Ferrous Cans	\$ 25.00	\$ 20.00
Mixed Glass	\$ 35.00	\$ 20.00

EXHIBIT C
Requisition

To: City of Urbana, Illinois
400 South Vine Street
Urbana, Illinois 61801
Attention: Public Works Director

Re: Disbursement requisition under
Section 5.5. of the Recycling
Agreement dated _____,
1986 (the "Agreement") by and
between the City of Urbana,
Illinois (the "City") and Com-
munity Recycling Center, an Il-
linois not-for-profit corpora-
tion (the "Center").

Pursuant to and in accordance with the Agreement you
are directed and authorized to pay such persons for such purposes
and in such amounts, as follows:

<u>Payee and Address</u>	<u>Purpose</u>	<u>Amount</u>
--------------------------	----------------	---------------

The foregoing amount(s) is (are) hereby certified as for an appropriate purpose under the Agreement and has (have) not been the subject of a prior requisition.

The Center [] has [] has not attached hereto copies of appropriate invoices, receipts, cancelled checks, payroll records and other required information and documents, including UCC financing statements and the like granting the City the appropriate security interest in personal property subject to perfection of a security interest by the filing thereof, to evidence and/or secure, as may be the case, the above requisitioned amounts. The submission of this requisition constitutes a certification that no event of default or default under the Agreement is existing as of the date hereof, and to the Center's knowledge there is no basis therefor.

This requisition is made and submitted this _____ day of _____, 1986.

Community Recycling Center
an Illinois not-for-profit
Corporation

By: _____
Chair

and

By: _____
Recycling Representative