

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH COMMUNITY RECYCLING CENTER FOR PROCESSING RECYCLED MATERIALS

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois to enter into an agreement with Community Recycling Center for processing recycled materials; and

WHEREAS, a written copy of such an agreement entitled "AGREEMENT FOR PROCESSING RECYCLED MATERIALS" has been presented to and is now before this meeting.

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

Section 1. That the Council hereby approves the City entering into an agreement with Community Recycling Center for processing recycled materials.

Section 2. That the Mayor is hereby authorized to execute and deliver such an agreement on behalf of the City. The agreement shall be in substantially the form of the Agreement which is before this Council, a copy of which is attached hereto and incorporated herein. The City Clerk is authorized to attest to such execution thereof.

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.

PASSED by the City Council this 7th day of December, 1992.


Ruth S. Brookens
Ruth S. Brookens, City Clerk

APPROVED by the Mayor this 14th day of December, 1992.

Jeffrey T. Markland
Jeffrey T. Markland, Mayor

THIS IS THE ATTACHMENT WHICH IS REFERRED TO IN
ORDINANCE NO. 9293-49 AND IS INCORPORATED
THEREIN BY REFERENCE.

Ruth S. Brookens
Ruth S. Brookens, City Clerk
December 9, 1992
Date



AGREEMENT

FOR PROCESSING RECYCLED MATERIALS (City of Urbana and Community Recycling Center)

In consideration of the mutual covenants and conditions contained in this Agreement, the City of Urbana, Illinois, a municipal corporation (hereinafter called "City"), and Community Recycling Center (hereinafter called "Processor") agree as follows:

Section 1. Term. This Agreement shall begin on January 1, 1993 and shall terminate on December 31, 1993, unless sooner terminated as provided in Section 20. The City may exercise options to require continuation of the Agreement for twelve one (1) month increments beginning January 1, 1994, so long as the first such option is exercised by written notice prior to November 1, 1993, and on thirty-day notice thereafter.

Section 2. Compliance with Law, Notices, Permits.

(a) The Processor shall give all notices required by, and comply with, all applicable laws and ordinances of the City of Urbana, State of Illinois or other governmental entity. Should the Processor fail to observe the aforementioned laws or ordinances, and do work at variance with any applicable law or ordinances, the Processor shall correct the methods of doing such work without costs to the City, even if such deficiency is discovered after the date of final inspection or payment. The Processor shall be responsible for obtaining any necessary permits.

(b) The Processor shall comply with all laws, ordinances, rules and regulations relating to the transportation and disposal of recyclable materials and other waste products. The Processor

shall maintain records of the manner in which it has disposed of recyclable material and other waste products. The Processor shall provide proof as defined in Section 18, that all materials have been legally disposed of during the payment period prior to receipt of any payment.

Section 3. Location.

(a) The Processor shall maintain the location or locations at which it sorts, processes and markets materials delivered by the city in a clean, sanitary condition.

(b) The Processor shall maintain as 720 North Market Street, Champaign, Illinois, or other agreed upon location, a processing center at which the City will deliver materials collected in its recycling program.

(c) The Processor shall erect and maintain signs for the purpose of directing and providing information to the users of the processing facility described in Section 3(b).

(d) The Processor shall maintain buy-back operations at the facility. The price paid for these materials will be determined by the Processor. Materials may be added or deleted to buy-back operations, depending on market conditions, at the discretion of the Processor.

Section 4. Subprocessors and Assignees. The Processor agrees to personally perform this Agreement and not to assign or subcontract any of its obligations under this Agreement without the written permission of the City's representative. Such permission shall not be unreasonably withheld.

Section 5. No Waiver by Payment. Payment for any work under this Agreement shall not relieve the Processor from its responsibility for the failure to abide by the terms of this Agreement and upon written notice to the Processor, the Processor shall promptly correct any violations of the agreement or of Law.

Section 6. Insurance. The Processor shall not commence work under this Agreement until it has obtained all insurance required by this Section. Any subprocessor of the Processor shall maintain the same minimum insurance.

(a) **Statutory Liability Insurance** Worker's Compensation and Occupational Disease, with statutory limits as prescribed by the State of Illinois and Employer's Liability Insurance , with a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damage or bodily injury from one (1) or more claims arising from each accident or occupational disease.

(b) **Comprehensive Liability Insurance.** This coverage shall be in the form of Comprehensive Liability Insurance which shall include protection against liability assumed in this Agreement and shall include protection against liability included in (1) and (2) following:

(1) **Operations and Premises: Liability on Account of**

(a) Bodily injury to or death of persons or on account of damage to or destruction of property, resulting from execution of work provided for in this Agreement; or due or arising in any manner from any omission or any act or negligence of the Processor or any subprocessor and their respective employees or agents, including damage to adjacent property.

(b) Bodily injury to or death of Processor or any subprocessor or any of their respective employees or agents, due to the condition or state of repair of the premises or other property of the City upon, about, or in connection with which any work incidental to the execution of this Agreement is performed.

(c) Destruction or damage to personal or real property including but not limited to destruction or damage to the property of the City and non-parties to this Agreement.

(2) Processor's Protective Liability. Liability for acts or omissions of any subprocessors the Processor may employ.

(3) Limits of Coverage. Policies for Comprehensive General Insurance under subparagraphs (1) and (2) above shall be written in the following limits of liability:

(a) Bodily Injury, including death resulting therefrom, Five Hundred Thousand Dollars (\$500,000.00) for any one (1) person injured or killed, and One Million Dollars (\$1,000,000.00) for any one (1) accident or occurrence where more than one (1) person is injured or killed.

(b) Property damage of not less than Three Hundred Thousand Dollars (\$300,000.00) as a result of one (1) accident or occurrence subject to an aggregate limit of not less than Three Hundred Thousand Dollars (\$300,000.00).

(c) Automobile Liability: This coverage shall be in at least the amount of Five Hundred Thousand Dollars (\$500,000.00) bodily injury per occurrence.

(c) Proof of Insurance. Before execution of this Agreement, the Processor shall submit a certificate of insurance indicating the required coverages are in effect that is satisfactory to the City. The Processor shall similarly submit each subprocessor's policies of similar insurance before each commences work. Such insurance will be carried with financially responsible insurance companies licensed in the State of Illinois and shall be kept in

force until the Processor's work is accepted by the City. Contracts of insurance shall be for the duration of the Agreement.

(d) City as Additional Insured. All policies of insurance required hereunder shall contain as endorsement showing the City of Urbana and its officers and employees as additional insureds under said policies, as their interests and liability may appear or exist. The City shall be named as a certificate holder.

(e) Insurance coverage specified in this Section shall in no way lessen or limit the liability of the Processor under the terms of the Agreement. The Processor shall procure and maintain at the Processor's own cost expense any additional kinds and amounts of insurance that, in the Processor's own judgement, may be necessary for the Processor's proper protection in the prosecution of the work.

Section 7. Hold Harmless. Except as provided under Section 12, or as prohibited by law, Processor shall indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings or any kind or nature, including Worker's Compensation claims and including the cost of defending same including costs and attorneys' fees, of or by anyone whomsoever, resulting solely from the operations of the Processor or the Processor's employees or subprocessors and acts or omissions of employees or agents of Processor or subprocessors.

Section 8. Public Advertising. The processor is specifically denied the right of using in any form or medium the name of the City of Urbana for public advertising unless express permission is granted by the Administrative Officer of the City.

Section 9. Additional Payments Not Allowed. No claim for extra payment under this Agreement will be allowed on account of strikes, renegotiation of labor contracts or other labor related negotiations, it being agreed by the parties hereto that such matters were foreseeable by the Processor and taken into account in the submission of its offer.

Section 10. Bid-Rigging, Bid-Rotating Prohibited. The Processor certifies, in accordance with Section 33E-11 of the Illinois Criminal Code, that the Processor is not barred from bidding on any contract with the City as the result of a violation of either Illinois Revised Statutes, 1989, Chapter 38, paragraph 33E-3, Bid Rigging, or Illinois Revised Statutes, 1989, Chapter 38, paragraph 33-4, Bid Rotating.

Section 11. Human Rights Guarantee Provision.

(a) For the purpose of this provision, "contracting entity" means the legal entity that has signed a contract to provide services or perform work or to provide personal property or a combination thereof to or on behalf of the City. The words used herein and the requirements shall be interpreted or have the meaning ascribed to them in the City's Equal Opportunity in Purchasing Ordinance.

(1) Non-Discrimination Pledge. The contracting entity shall not discriminate against any employee during the course of employment or applicant for employment because of race, color, religion, creed, class, national origin, sex, age, marital status, physical or mental handicap, sexual preference, family responsibilities, matriculation, political affiliations, prior arrest record or source of income.

The contracting entity shall take good faith affirmative action in accordance with its affirmative action plan which has been submitted to and approved by the City.

(2) Notices. The contracting entity shall post notices regarding non-discrimination in conspicuous places available to employees and applicants for employment. The notices shall be provided by the City, setting forth the provisions of the non-discrimination pledge; however, the contracting entity may post other notices of similar character supplied by another governmental agency in lieu of the City's notice.

(3) Solicitation and Ads for Employment. The contracting entity shall, in all solicitations and advertisements for employees placed by or on behalf of the contracting entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, class, national origin, sex, age, marital status, physical or mental handicap, sexual preference, family responsibilities, matriculation, political affiliations, prior arrest record or source of income. Ad advertisement in a publication may state "This is an Equal Opportunity Employer", which statement shall meet the requirements of this Section.

(4) Employment Relations. The contracting entity shall have sent within six (6) months prior to entering into a City contract or shall send prior to the effective date of the contract to each labor union, employment service agency, or representative or workers with which the contracting entity has a collective bargaining agreement or other contract or understanding, a notice as set forth in Section 2 advising the labor union, worker representative, employment service agency of the contracting entity's commitment under the Non-discrimination Pledge.

(5) Access to Books. The contracting entity shall permit access to all books, records and accounts pertaining to its employment practices by the administrative Officer or the Administrative Officer's

designee for purposes of investigation to ascertain compliance with this Provision.

(6) Reports. The contracting entity shall provide periodic compliance reports to the Administrative Officer. Such reports shall be within the time and in the manner proscribed by the City and describe efforts made to comply with the provision of this Provision entitled "Human Rights Guarantees".

(7) Remedies. In the event that any contracting entity fails to comply with the non-discriminating pledge, affirmative action provision of the above subsections, or fails to comply with or make good faith efforts to comply with affirmative action plan or any provision of City, State or Federal law relating to human rights, after the city has provided written notice to the contracting entity of such failure to comply and provided the contracting entity with an opportunity to speak to the Administrative Officer or the Administrative Officer's designee relative to such failure to comply, then the City, at its option, may declare the contracting entity to be in default of this agreement and take, without deletion, any or all of the following actions:

(i) Cancel, terminate or suspend the contract in whole or in part;

(ii) Declare the contracting entity ineligible for further contracts for a calendar year;

(iii) Recover from the contracting entity by set-off against the unpaid portion of the contract price, or otherwise recover money due to the contracting entity pursuant to the contract, the sum of Fifty Dollars (\$50.00) per day, as liquidated damages and not as a penalty, for each day after the date of the notice that the contracting entity shall fail to comply with these provisions of the contract, as determined by the Administrative Officer, the said sum being fixed and agreed upon by and between the contracting entity and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the City would sustain in the event of such breach of contract, and said amount is agreed to be the amount of monetary damages which the City would sustain.

(iv) Seek other sanctions as may be imposed by the Human Relations Commission or other governmental bodies pursuant to law.

(b) The Processor shall automatically include the provisions of the foregoing paragraphs in every subcontract so that the provisions will be binding upon each subprocessor.

Section 12. Hazardous Materials, Special Wastes, Toxic Substances. Should the Processor or any of its Processors or subprocessors discover any suspected hazardous materials, special waste, or toxic substances as defined by State or Federal law on the work site, the Processor shall take action as necessary to protect the public's health and safety, and immediately notify the City of its discovery. The City shall be responsible for the removal, clean up, and proper disposal of hazardous material, special waste, and toxic substance if it is determined that such was generated or delivered to the facility by City's recycling program. The Processor warrants it has no knowledge of any such hazardous materials as of the date of this Agreement that has not been properly disposed of and the City notified.

Section 13. Ownership of Delivered Materials. Materials, other than hazardous materials, special waste, and toxic substances once delivered by the City to Processor are the property of the Processor, to the extent the City may lawfully transfer ownership.

Section 14. Processing Requirements.

(a) The Processor shall provide a facility at 720 North Market Street, Champaign, Illinois, or such other location or locations as the parties agree to in writing of sufficient size and construction to allow the safe and sanitary sorting, processing and

storage of materials delivered by the City pursuant to this Agreement.

(b) The Processor shall sort materials delivered by the City and otherwise prepare the materials to make them suitable for sale to primary and secondary markets. Materials should be processed in such a manner as to maximize their value in a secondary application. Services will also include the packaging and shipping of materials to purchasers. It is recognized that packaging and shipping arrangement will differ among purchasers and markets and the Processor may make whatever arrangements the Processor finds acceptable. The City has no obligations for shipping or further processing of materials once collected and delivered to the Processor. All materials shall be sold to secondary or primary markets, except materials delivered in a condition which would be unsaleable, including but not limited to, wet newspaper and broken mixed glass. Unsaleable materials may be alternatively disposed of at the discretion of the Processor. Any materials alternately disposed or of landfilled will be recorded and the City notified of the materials and amounts so disposed and the method of disposal used.

(c) Materials delivered to the processing facility in a condition making them unsuitable for recycling or for recycled material markets will not be required to be sold or delivered for use as production inputs and may be alternatively disposed of. Standards of Acceptable Materials are contained in Exhibit A. The Processor will accept, materials not included in Exhibit A, up to

five (5) percent by weight of the total materials delivered to the processing facility and shall dispose of this material at no additional charge to the City. Any monthly weight above five (5) percent will be disposed of at a cost of thirty (30) dollars per ton to the City. The Processor shall record and notify the City of the materials and amounts so disposed.

Section 15. Materials to be Processed.

(a) The Processor shall provide services for the following materials; newspaper including newspaper inserts, glass containers (both beverage bottles and food jars) of flint, green and amber cullet, aluminum cans, bi-metals cans and tinplate cans. The Processor may, accept, process and sell other recyclable materials other than those listed. Both parties recognize that recycling markets change and that the materials collected and processed may need to change during this contract. This list of materials and the segregation requirements may be changed upon written agreement by all parties.

(b) The City shall deliver materials segregated into the following categories: newspaper and newspaper inserts; aluminum, bimetal and tinplate cans; and glass containers.

Section 16. Recycling Representative.

(a) The City 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 the Environmental Manager in the Public Works Department.

(b) The recycling representative for The Community Recycling Center shall be the Executive Director.

Section 17. Payments. Payments shall be made by the City to the Processor at the fixed monthly rate of \$2748.00 for the monthly base weight of 61 tons of recyclable material delivered to the processor. If the amount of delivered recyclable material exceeds the monthly base weight, then the City shall make additional payment of \$43.87 per ton. Payment will be made within 30 days of invoice.

If the City exercises its option under Section 1 of this Agreement to continue the Agreement beyond December 31, 1993, the fixed monthly rate shall increase to \$3160.20 and the per ton rate shall increase to \$50.45 beginning January 1, 1994.

Section 18. Records. The Processor will record all materials and weights delivered to the facility and provide to the Administrative Officer or his designee monthly records of the materials. The Processor will also provide information on the marketing of the materials to the City. This marketing information shall include, at a minimum, the dates materials were sold, delivery charges, weights of materials sold by shipment, and sales invoice numbers. In addition copies of the sales invoices revealing the purchasers name and sale prices will be available for review by the Recycling Representative at the corporate offices in Champaign. Any marketing information the Processor can show is of

a confidential nature, including pricing, will be held in confidence by the City to the extent allowed by law.

Section 19. Hours of Service.

(a) The Processor shall operate the facility for receipt of City materials from 7:30 a.m. through 4:30 p.m., Monday through Friday. The Processor will provide sufficient personnel to provide prompt service to the vehicles delivering materials from the curbside programs. Vehicles waiting to deliver materials should, on the average, not be required to wait longer than 30 minutes before being unloaded. Equipment will be service as soon as possible upon arrival.

(b) The Processor will not be required to operate on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day.

Section 20. Termination and Suspension.

(a) This Agreement will continue in full force and effect during the term as described in Section 1 herein unless it is terminated at an earlier date by either party, as outlined below.

(b) The City or the Processor may terminate this Agreement by giving no less than thirty (30) days' written notice of the intent to terminate this Agreement. Notice shall be considered given when deposited in the United States Mail, postage prepaid and addressed to Processor or the City.

(c) In the event the Processor voluntarily petitions for bankruptcy or is adjudged bankrupt or makes a general assignment for the benefit of creditors or if a receiver is appointed on

account of the Processor's insolvency or in the event that any of the provisions of this Agreement are violated by the Processor, or by any of its subprocessors, the City may terminate the Agreement.

(d) In the event that any of the provisions of this Agreement are violated by the Processor or the City, the aggrieved party may serve written notice upon the other of the intention to terminate this Agreement, such notice to contain the reasons for such intention.

(e) In the event of termination, the Processor will be paid by the City for all services properly performed which were actually, timely and faithfully rendered up to the receipt of the notice of termination, and thereafter, upon the express written direction of the City, until the date of termination. The Processor will provide all work documents developed up to the date of termination prior to the City rendering final payment for service, which documents become the property of the City.

Section 21. Force Majeure. The performance provisions of this Agreement are subject to the following limitation: If by reason of force majeure the Processor is unable in whole or in part to carry out the obligations on its part contained in this Agreement, the Processor 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: 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; storms; floods; washouts; droughts; restraint of government and utilities; or any similar cause or event not reasonably within the control of the Processor. The processor agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Processor 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 Processor, and the Processor shall not be required to make settlement of strikes, lockout, and other industrial disturbances by acceding to the demands of the opposing part or parties when such course is in the judgment of the Processor unfavorable to the Processor. The Processor 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 Processor of the fees to the extent in the City's reasonable judgment, based upon the reduction in the tonnage of material received and processed by the Processor, that the Processor's performance under this Agreement is reduced, and similarly the Processor shall prorata repay any disbursements so made.

Section 22. Change in Markets. No market exists for a material included in Exhibit A when the Regional Market Price for that material is less than one cent per net ton. "Regional Market Price" shall mean the highest net price F.O.B. the Community

Recycling Center to be paid by any market within 1000 miles of Urbana.

The Processor shall promptly notify the City when no market exists for a material included in Exhibit A. Upon receipt of said notice, the City shall have not less than fourteen (14) days to decide whether to make additional payments to the Processor. If the City decides not to make additional payments or if the sum total of any additional payments and the Regional Market Price for said material is less than one cent per net ton, then the Processor may refuse to accept said material.

If the Processor refuses to accept said material, then the City shall prorata reduce its payments to the Processor. The reduction in the fixed monthly payment and the monthly base weight shall be based upon the percentage reduction in the average monthly tonnage of all materials received by the Processor from the City in the preceding three months. Payment for material received in excess of the adjusted monthly base weight shall be in the amount of \$43.87 as provided in Section 16.

Section 23. Notices. Notice given hereunder shall be given to:

To the City at:

Administrative Officer
City of Urbana
400 South Vine
Urbana, Illinois 61801

To the Processor at:

Executive Director
Community Recycling Center
720 N. Market St.
Champaign, Illinois 61820

Section 24. No personal liability of officials of the City.

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, agent, employee or attorney of the City, in his or her individual capacity, and neither the members of the City Council nor any official of the City shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution, delivery and performance of this Agreement.

Section 25. Effective Date. The parties hereby agree that the effective date of this Agreement shall be the date the Agreement is executed by the City as indicated by the date beneath the Mayor's signature.

IN WITNESS WHEREOF the City and the Processor have caused this Agreement to be executed by their duly authorized officers.

CITY

PROCESSOR

By: _____
Mayor Jeffrey T. Markland

By: _____

Date: _____

ATTEST:

By: _____

City Clerk Ruth S. Brookens

EXHIBIT A

Standards for Acceptable Materials

- A. **Newspaper**
Will include reasonably clean, dry newspaper and inserts delivered in and part of the newspaper.
- B. **Glass Bottles and Jars**
Will be rinsed with bottle tops and lids removed. Only beverage and food containers are acceptable.
- D. **Cans**
Food and beverage cans will be acceptable. Cans should be rinsed with labels removed. Lids, if of a different material than the can, shall be removed.