

WARNING: None of this information has been reviewed by an attorney. Please seek legal advice on this contract.

AGREEMENT FOR MULTIFAMILY RECYCLING SERVICES

THIS AGREEMENT is made as of **(DATE)**, between **(CITY's NAME)**, (hereafter the "City"), and **(HAULER's NAME)**, (hereafter the "Contractor").

The City and the Contractor agree as follows:

1. Definitions

1.1 "Recyclable Materials" mean newspaper, newspaper inserts and phone books, sorted glass food and beverage containers, unsorted aluminum, steel and "tin" cans, unsorted mail, magazines and boxboard, corrugated cardboard, and other materials as mutually agreed upon by the City and the Contractor.

1.2 "Drop-off recycling center" or "Site" means the location of recycling containers and dumpsters used at multi-unit residential properties, as specified by the City from time to time.

1.3 "Recycling Collection" means the taking up of all Recyclable Materials accumulated at the Drop-off recycling centers within **(CITY, ZONE)**, identified in Appendix "A" as amended from time to time, and the transporting of the Recyclable Materials to a site approved by the City, where the Recyclable Materials can be processed for the marketplace.

1.4 "Tenants" means persons bringing Recyclable Materials to the Drop-off recycling centers.

2. Services To Be Performed By Contractor

2.1 The Contractor shall provide set up and take down of Drop-off recycling centers within a schedule mutually agreed upon by the Contractor and the City.

2.2 The Contractor shall provide Recycling Collection services at each Drop-off recycling center.

2.3 The Contractor will determine Recycling Collection schedules subject to approval by the City. Any change in Recycling Collection schedules, addition or removal of containers or dumpsters and/or set up of new accounts by either the Contractor or any subcontractor must be submitted in writing to and approved by the City at least five (5) working days prior to the changes. If scheduled service cannot be made due to equipment failure, illness, weather, or other unforeseeable delay, the Contractor will notify the City immediately.

2.4 The Contractor will lease containers to the City or use containers owned by the City as part of the Recycling Collection services except in the case of dumpsters used for the collection of corrugated cardboard (“corrugated dumpsters”). The corrugated dumpsters shall be provided at the Contractor’s expense and in a size and style as specified by the City for each Site. The Contractor will charge the City a rental fee for corrugated dumpsters as outlined in Appendix B. Leased containers shall contain at least five percent (10%) post consumer recycled plastic. At the end of this agreement the containers will become the property of the City

2.5 The Contractor shall keep up-to-date and accurate records of the number and type of containers, corrugated dumpsters, stickers and cables and locks located at each Drop-off recycling center and in storage. The Contractor shall notify the City whenever containers or stickers (signs to identify the containers as recycling containers) in reserve are below fifty (50) in number.

2.6 The current inventory of City owned containers and all containers leased from the Contractor shall be delivered, labeled and maintained at the Drop-off recycling centers by the Contractor.

2.7 The Contractor shall provide annual recycling container washing (with biodegradable soap and in compliance with U.S. Environmental Protection Agency runoff guidelines), sanitizing, repairing and re-labeling. This service will be provided according to a schedule mutually agreed upon by the Contractor and the City.

2.8 The Contractor shall supervise container delivery of correctly labeled and clean containers and/or corrugated dumpsters at a Drop-off recycling center on the scheduled set up date. In the case of corrugated dumpsters the Contractor shall set up within ten (10) working days of the City's request.

2.9 The Contractor shall immediately cable and lock all remaining containers at a Site where containers have been damaged or stolen. The Contractor shall notify the City within one (1) working day of the damage or theft and resulting cable and lock follow-up. The Contractor shall report to the City within one (1) working day all Drop-off recycling centers missing locks or cables.

2.10 The Contractor shall respond to the City's service-related inquiries within two (2) working days of receipt.

2.11 The Contractor shall not be required to make regular collections on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day; provided, however, that collection occurs reasonably in advance thereof or thereafter in the opinion of the City recycling program director. The rest of the week's schedule shall be completed regardless of the holiday. The Contractor will provide the City notice of the schedule for pick up ten (10) days prior to the holiday.

2.12 The City and the Contractor acknowledge that timely performance of collection services is essential to the success of the recycling program. In extreme circumstances, collection may be suspended to protect public safety and/or the safety of the contractor's employees. In the case of such an event, the Contractor will first contact the City and then notify the effected sites and reschedule collection on a plan acceptable to the City and the sites.

3. Preparation For Collection

3.1 Recyclable Materials shall be prepared by Tenants as follows:

Newspaper, newspaper inserts and phone books: Placed in specially marked containers labeled "Newspapers." All materials which are part of the daily or Sunday newspaper are acceptable. Newspaper may be bagged or loose. Mixed mail, magazines and boxboard:

Placed in specially marked containers labeled "Mail & Magazines." No sorting is required.

Glass bottles and jars: Placed in specially marked containers labeled "Clear Glass" and "Brown and Green Glass." Removal of caps, labels, or metals is not required. Metal cans (steel, bimetal and aluminum): Placed in specially marked containers labeled "Cans." Rinse only. Removal of paper labels from cans is not required. "Plastic Bottles marked #1 or #2 with a neck.

Corrugated cardboard materials: Placed in specially marked containers labeled "Cardboard Only" or flattened and placed next to or between other recycling containers. In the case of dumpster service, corrugated cardboard will be flattened and placed in or, if the corrugated dumpster is full, immediately around the dumpster.

Optional materials: Placed in specially marked containers labeled with the Recyclable Material and prepared according to a set of instructions mutually agreed upon by the City and the Contractor.

All Recyclable Materials shall be collected as specified above. Any mixing of sorted Recyclable Materials beyond the description above during Recycling Collection shall be done only pursuant to written amendments to this Agreement signed by both the City and Contractor or subcontractor.

3.2 All Recyclable Materials placed for collection shall be owned by and are the responsibility of the Tenants until they are handled by the Contractor. Upon handling of the Recyclable Materials by the Contractor, the Recyclable Materials become the property and responsibility of the City.

4. Contractor's Equipment

4.1 All equipment, including that of any subcontractor, shall be painted and marked uniformly and shall be properly identified in a method mutually acceptable to the City and Contractor.

4.2 In providing Recycling Collection services, the Contractor shall use water-tight containers or vehicles so constructed that their contents will not spill. Contractor shall keep all containers and vehicles clean and as free from offensive odors as possible.

4.3 The Contractor shall keep vehicles compatible with recycling containers (90/95-gallon containers) owned by City for the term of this Agreement.

4.4 The Contractor and any subcontractor shall keep all equipment used in the performance of Recycling Collection in good working order and in a clean sanitary condition. Equipment is subject to periodic inspection by the City.

4.5 Contractor shall clearly mark, as determined by the City, all trucks used for Recycling Collection with the Contractor's name and phone number.

4.6 All corrugated dumpsters shall be clearly and boldly marked with labels reading "Cardboard Only" as well as the City's name, logo and phone number on all visible sides of the dumpster in a manner acceptable to the City.

4.7 Corrugated dumpsters shall be cabled and locked so that only the narrow slot designed for inserting cardboard is accessible to the users. Dumpsters will be placed so that access to users is maintained.

4.8 Contractor agrees to supply the City with keys for corrugated dumpster locks to send to the Site contact. No dumpster shall be placed in service that cannot be cabled and locked, except upon written permission from the City.

4.9 All corrugated dumpsters shall be cleaned and maintained in a safe and visually appealing fashion by the Contractor. Dumpsters shall be kept free of graffiti and other offensive markings and regularly painted and cleaned as needed.

5. Additional Contractor Responsibilities

5.1 The Contractor shall maintain an office with continuous supervision for accepting complaints and customer calls. The office shall be in service during the hours of 7:00 a.m. until 5:00 p.m. Monday through Friday or until all routes are complete,

whichever is later. The address and telephone number of such office and any changes therein shall be given to the City in writing. The address of Contractor's office as of the execution of this agreement is: **(ADDRESS)**. The telephone number is: **(TELEPHONE NUMBER)**.

5.2 The Contractor or subcontractor shall immediately clean up and dispose of any Recyclable Material or other debris that is spilled in the provision of Recycling Collection services to a Site.

5.3 The Contractor or subcontractor shall not use private driveways or parking lots that are not owned by the Site they are servicing while providing Recycling Collection service under this Agreement.

5.4 Recyclable Materials deemed unacceptable by the Contractor, according to the preparation procedure in Section 3.1, shall be collected on the first occurrence by the Contractor or shall be placed in a refuse container existing at the Site. The Contractor shall report the reason such Recyclable Materials were deemed unacceptable to the City in writing within one (1) business day of the occurrence. The City will notify Tenants of the proper preparation procedure. Subsequent instances of unacceptable Recyclable Materials may be rejected by the Contractor, who shall report such instances in writing to the City.

5.5 The Contractor shall use its best efforts to ensure that all Recyclable Materials collected in **(CITY)** are not placed in landfills or incinerators and are distributed to the appropriate markets for reuse and recycling. If the Contractor must dispose of any Recyclable Materials, the method of disposal will be determined by the City. The Contractor will report to the City the types and amounts of Recyclable Materials landfilled or incinerated, the reason for the landfilling or incineration and the steps being taken by the Contractor to avoid future landfill or incineration. All costs associated with such disposal will be borne by the Contractor. The Contractor will at all times be under a duty to minimize Recyclable Materials landfilled or incinerated, and the City will attempt to find and use the lowest cost, most environmentally sound method of disposal, subject to City approval.

5.6 In the event that the market for particular Recyclable Materials ceases to exist, or becomes economically depressed such that it is economically unfeasible to

continue Recycling Collection of those Recyclable Materials, the City will have the right to cause the Contractor to cease Recycling Collection of those Recyclable Materials.

5.7 The Contractor will negotiate in good faith to establish a rate of recovery for all Recyclable Materials collected in **(CITY / ZONE)** pursuant to this Agreement.

5.8 The Contractor shall be responsible for any damage incurred in the performance of this Agreement, except as provided for in state law, by any employee, truck or equipment to property such as, but not limited to, fences, garage doors and third-party vehicles at Sites.

6. City's Responsibilities

6.1 The City shall provide the following services:

- a) Determine specific multi-unit, city, school or commercial Sites that may become part of the program.
- b) Determine the level of service to each Site with Contractor's recommendation.
- c) Determine with Contractor's technical approval the type of equipment required by each Site.
- d) Provide public education and promotional materials to Site managers for distribution to Tenants or directly to Tenants.
- e) Communicate with Site managers and/or Tenants on Recyclable Material quality requirements.

6.2 If, in the opinion of the Contractor and the City, a Site is not meeting the Recyclable Materials preparation specifications of Section 3.1 the City will give the Site manager appropriate notice of the problem and its intent to cancel the Site's Recycling Collection services if the problem is not corrected.

6.3 The City reserves the right to provide its own 90/95-gallon recycling containers to Contractor. Such containers will be compatible with existing collection equipment of the Contractor during the term of this Agreement.

Section 7 Payment

Subject to the availability of funds from **(COUNTY)** or **(CITY)**, the City shall compensate the Contractor for the set-up and take down of recycling containers at Drop-off recycling centers and for Recycling Collection. During the term of this Agreement, the City shall pay the Contractor on a monthly basis, in the sum of \$_____ per hour, for set-up and take down and for Recycling Collection from Sites using 90/95-gallon plastic containers, and the City shall pay the Contractor on a monthly basis for the separate corrugated Recycling Collection, in the sum of \$____ per stop.

Payment will be made five (5) working days after receipt of invoice from the Contractor (but no later than sixty (60) days after receipt of invoice from the Contractor). The Contractor shall provide accurate billing, including tonnage reports, to the City by the sixth working day of the month following the month of service. The Contractor shall remedy any errors in tonnage or billing within five (5) working days of notification.

Section 7.2:

The Contractor shall share a portion of its revenues with the City on the following terms: the Contractor shall share with the City anything over \$_____ per ton processing fee for revenues received from the sale of recyclable materials. The revenues will be shared so that ____% of the revenues belong to the City and the Contractor retains the remaining ____%. When applicable, a check will be sent to the City by the Contractor on the fifth day of every month for the preceding months revenue share.

The revenues generated by the sale of the recyclable materials will be indexed using the actual revenues received or indexed using the Official Boards Market Yellow Sheet (Chicago market, high-side and the second edition of the month) for all fibers which ever is higher and in the case of the glass, metal cans and plastic bottles collected through this Agreement, the actual revenues will serve as the index or regional market prices using indexes mutually agreed to by the city and Contractor, whichever is higher. The City

reserves the right to review any and all contracts, agreements and actual receipts of revenues for any recyclable materials marketed through this agreement.

The City reserves the right to approve all processors, brokers and end markets for all recyclable materials, which approval shall not be unreasonably withheld.

7.3 If the agreement is extended, The City will own a leased container after the container has been in the service of the City for 36 months. If there is an early termination of the Agreement by the Contractor, the city will own all of the containers currently in service. If there is a termination of the Agreement by the City for Contractor's failure to perform, the city will own all of the containers currently in service.

7.4 During the term of this Agreement, and subject to the availability of funds, the City shall pay the Contractor \$ on a monthly basis for customer services and warehousing of the City's containers and materials. Customer services include: customer communication (Site-meetings, written or phone correspondence); new account coordination; new account follow-up; account monitoring; trouble-shooting; account closure; record keeping; and other special projects as agreed to by the City and the Contractor.

7.5 The parties agree that, in addition to any other remedies available to it, the City may withhold payment from Contractor in the amounts specified below as liquidated damages for failure of the Contractor to fulfill its obligations under this Agreement:

- (a) Failure to comply with services outlined in Section 2.3 - \$500 per incident.
- (b) Failure to comply with services outlined in Section 2.8 - \$500 per incident.
- (c) Failure to comply with Section 2.10 - \$250 per incident.
- (d) Failure to comply with Section 2.12 - \$250 per incident.
- (e) Failure to comply with Section 8.1 - \$750 per incident.

- (f) Failure to maintain the general arrangement and order of containers - \$100 per incident.
- (g) Failure to service containers at a site with the result being overfull containers before the next regularly scheduled collection - \$100 per incident.
- (h) Failure to re-label any containers that have damaged or missing labels with appropriate new labels - \$50 per incident.
- (i) Failure to immediately report and schedule the timely repair or replacement of any containers with damaged or missing parts - \$50 per incident.
- (j) Failure to provide next business day reports of problem accounts - \$100 per incident.

These amounts are liquidated damages for losses suffered by the City, and not a penalty. The City agrees to notify the Contractor on a monthly basis of such damages. Any case-by-case decision by the recycling program director to waive such liquidated damages does not preclude the City's right to invoke such liquidated damages for the remaining term of this Agreement.

8. Filing Of Reports

8.1 The Contractor shall provide an accurate monthly summary of the total volume and tonnage of all Recyclable Materials collected and the primary purchaser(s) of the Recyclable Materials. Monthly summaries and invoices shall be submitted no later than the sixth working day of the month following the month of service, and may be submitted electronically upon agreement of the City.

8.2 The Contractor shall fax the City's "Building Information Sheet", with the set up date and pick up schedule for 90/95 gallon container and/or corrugated dumpsters within two (2) working days of receiving a request for this document from the City. The

Contractor shall fax the same form with container serial numbers within two (2) working days of an account set up or cancellation.

9. Access To Records

9.1 The Contractor shall provide access to the City or any of its duly authorized representatives to review any books, documents, papers, and records of the Contractor related to performance of this Agreement for the purpose of making an audit or other examination verifying compliance with its terms, and for preparing any reports required of the City.

10. Insurance

10.1 Contractor and all subcontractors shall maintain comprehensive general liability insurance against liability imposed by law for bodily injury or death, in the sum of not less than \$_____ each individual, \$_____ each occurrence, and against liability for property damage of not less than \$_____ for each occurrence at all times during the term of this Agreement.

10.2 Contractor and all subcontractors shall maintain worker's compensation insurance and employer's liability insurance as required by law at all times during the term of this Agreement.

10.3 Contractor and all subcontractors shall maintain automobile liability and property damage insurance, including coverage for non-owned and hired vehicles, in limits as for the comprehensive general liability coverage required by Section 10.1, at all times during the term of this Agreement.

10.4 The City shall be named as an additional insured in these policies for coverage needed for work as specified in this Agreement, which contracts of insurance shall provide that the coverage may not be terminated or changed by the Contractor, subcontractor or insurer except upon thirty (30) days' written notice to the City recycling program director.

10.5 No insurance policy obtained in satisfaction of this Section 10 shall contain any provisions for exclusions from liability other than provisions for exclusion from liability forming part of the standard basic unamended and unendorsed form of policy, except that no exclusion will be permitted in any event if it conflicts with a coverage expressly required in this Agreement, including by not limited to the indemnity provisions of Section 11.

10.6 Contractor shall provide the City with a certificate of insurance verifying insurance coverage in effect before any work under this Agreement begins, and thereafter on demand. Compliance by the Contractor with the foregoing requirements to carry insurance and furnish certificates shall not relieve the Contractor from liability assumed under the provisions of this Agreement.

11. Indemnification

11.1 The Contractor hereby agrees to indemnify and hold harmless the City and its directors, officers, agents, and employees from and against all claims, damages, losses, or expenses, including attorneys' fees and other costs of defense, for which it may be held liable, arising out of or resulting from the assertion against the City of any claims, debts, or obligations in consequence of the performance of this Agreement by the Contractor, its employees, agents, or subcontractors.

12. Term And Termination

12.1 The term of this Agreement shall be from **(DATE)**, through **(DATE)**.

12.2 This Agreement may be renewed at the City's discretion or may be opened for competitive bidding after its expiration or other termination. Renewal shall be subject to agreement of the parties to all terms and conditions.

12.3 If, in the City's sole discretion, the Contractor or subcontractor fails to perform this Agreement diligently and on schedule or fails to reach mutual agreement where the terms of this Agreement so specify, the City shall have the right to terminate this Agreement. Prior to termination, the City shall give thirty (30) days' written notice identifying the basis of the intent to terminate. After the notice of intent to terminate has been served, both parties will attempt to reconcile their differences during the 30 day

notice period. If after the 30 day notice period the basis of the intent to terminate has not been cured to the satisfaction of the City either party may conclusively terminate this Agreement upon five (5) business days' written notice served by certified mail, return receipt requested upon the other party at that party's last know address.

12.4 City shall employ forces which are adequate to ensure satisfactory Recycling Collection services at all times and failure to perform shall not be excused by adverse weather, breakdown, or similar hindrances which on other work might be regarded as "acts of Providence."

12.5 Upon failure of the Contractor to fulfill any of its obligations under this Agreement, the City may hire such persons, or assign City employees and equipment, as are necessary to cure or mitigate Contractor's failure; the costs of such action may be charged and deducted from monies due the Contractor, collected from the Contractor, or collected by other legal recourse.

12.6 In the event Contractor breaches its obligations under this Agreement, Contractor agrees to pay, in addition to the actual damages and/or expenses sustained by the City as a result, the reasonable attorneys' fees and costs incurred by the City in pursuing any of it rights under this Agreement.

12.7 Contractor may terminate this Agreement for cause upon ninety (90) days' written notice.

12.8 This Agreement is contingent upon funding being provided to the City by **(COUNTY)** or **(CITY)** for multi-family, city, school or commercial recycling. The City is not responsible for any loss or damage to Contractor due to the failure of **(COUNTY)** and/or **(CITY)** to provide funding for services contemplated in this Agreement. This Agreement shall become null and void if such funding is reduced so as to adversely affect the City's ability, in its sole discretion, to fulfill this Agreement unless both parties mutually agree to continue performance of this Agreement under renegotiated terms.

13. Assignment

13.1 This Agreement is assignable only by agreement of the parties. If the Contractor is sold in whole or in part, the City reserves the right to negotiate a new agreement with any purchasers of the Contractor or its assets. The City reserves the right to declare this Agreement null and void within thirty (120) days of such a sale and to negotiate a new agreement for Recycling Collection services with the new owners of Contractor or its assets, or through a competitive bidding process.

14. Non-Discriminatory Practices

14.1 (CITY) ordinance section (SECTION NUMBER), which prohibits discrimination on account of race, color, creed, religion, affectional preference, ancestry, national origin, sex, disability, age, marital status, or status with regard to public assistance in the performance of public agreements, is made a part of this Agreement with the same force and effect as if set out herein verbatim.

14.2 The City requires that any subcontractor with annual gross revenues in excess of \$50,000 be required to develop an affirmative action policy statement and plan. The Contractor will have an affirmative action plan in compliance with all (CITY) and (STATE) requirements prior to execution of this Agreement.

15. Recycling

15.1 The Contractor shall participate in a recycling program for at least three types of Recyclable Materials and shall favor the purchase of postconsumer recycled products in its procurement processes. All reports, publications and documents produced and distributed as a result of this Agreement shall be printed on both sides of the paper, on a minimum of 50% postconsumer recycled and recyclable paper using soy-based inks where commonly accepted publishing practices allow. No such reports, publications, or documents shall be covered or bound with nonrecyclable materials.

16. Conflict Of Interest

16.1 Contractor affirms that, to the best of its knowledge, Contractor's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Contractor agrees that, should any conflict or potential conflict of interest become known to the Contractor, the

Contractor will immediately notify the City of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the City whether Contractor will or will not resign from the conflicting engagement.

17. Governing Law And Venue

17.1 This Agreement shall be interpreted and construed according to the laws of the state of (STATE). Any litigation regarding this agreement shall be venued in the State of (STATE), County of (COUNTY).

19. Whole Agreement

19.1 This agreement embodies the entire agreement between the parties including all prior understandings and agreements and may not be modified except in writing signed by all parties.

Executed as of the day and year first written above.

(Name), (Position)
(City)

Date

(Name), (Position)
(Company)

Date

