

CURBSIDE RECYCLING SERVICE CONTRACT

CONTRACT between the **City of Galena**, a Municipal corporation and **Montgomery Trucking, Inc.** an Illinois Corporation, for curbside recycling service. This contract is entered into this 1st day of September, 2013, by and between **Montgomery Trucking, Inc.**, an Illinois Corporation (**the "Contractor"**) and the **City of Galena**, a Municipal Corporation (**the "City"**).

RECITALS:

WHEREAS, City desires to continue and increase utilization of its curbside recycling service; and

WHEREAS, Contractor represents that it has experience in municipal waste services and the expertise necessary as well as purchase the equipment necessary to perform curbside recycling service in the City; and

WHEREAS, the City Council of the City has expressed its commitment to curbside recycling service.

NOW, THEREFORE, in consideration of the foregoing and of mutual covenants as set forth herein, the Contractor and the City intending to be legally bound hereby agree as follows:

1. ORDINANCE DESIGNATING CONTRACTOR.

The City agrees to immediately adopt an ordinance pursuant to Ch. 65 ILCS 5/11-19-5 of the Illinois Compiled Statutes, as amended, granting to the contractor the exclusive right to handle the collection and disposition of recyclables from residential dwelling units within the City in accordance with the terms and conditions of this contract, which contract shall be specifically referred to in such ordinance.

2. TERM OF CONTRACT.

- a. The term of this Contract shall be from the 1st day of September, 2013 through the 31st day of August, 2018, subject to the provisions of Paragraph 14 and 15 hereof and the City's right to terminate the Contract upon sixty (60) days' written notice if the City Council does not continue funding the service. Contractor and City may, by mutual agreement, extend the term of this Contract.
- b. At the expiration of said term, this Contract shall be considered to be automatically renewed for a five (5) year renewal term, unless either party shall notify the other party by registered mail, return receipt requested, not less than sixty (60) days prior to the expiration of the then term of the contract, notifying the other party that the party giving said notice does not desire to renew this Contract for said additional term.

3. INDEPENDENT CONTRACTOR.

The Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of City, nor shall any such person be entitled to any benefits available or granted to employees of City. Contractor shall not enter any subcontracts for performance of its responsibilities under this Contract without the written consent of the City.

4. NON-ASSIGNMENT.

Contractor shall not assign, transfer or convey this Contract or Contractor's rights, duties or obligations hereunder or any part thereof without the previous written consent of the City and the written concurrence of Contractor's surety. In the event Contractor attempts to assign, transfer, convey or otherwise alter this Contract or Contractor's rights, duties or obligations hereunder or any part thereof without the prior written consent of City, City may, at its option, terminate this Contract immediately.

5. AREAS OF SERVICE.

The areas of service in the City in which Contractor will perform services pursuant to this Contract are those specified in the Garbage and Refuse Collection and Disposal Contract entered into September 1, 2013, and shall include all residential units within the City limits as of the effective date of this agreement and as may be increased or decreased during the term of this agreement. Said provisions being incorporated herein by reference and such other areas of the City as identified by City and Contractor pursuant to Paragraph 9 of this Contract.

6. SCOPE OF SERVICE.

- a. Curbside recycling. Contractor will perform curbside recycling services in the City as follows:
 - i. Collection. Contractor shall collect and remove all recyclable materials, which are placed in or adjacent to containers, marked with the word "recycling" or with the recycling symbol, at the curbside on public streets, from all single family residences, guest homes, bed and breakfast facilities and all residential complexes of six or fewer units located in the service area described in Paragraph 5 of this Contract. Items placed at the curb for recycling may be "comingled" or not sorted. Should the City desire to change from comingled or single-stream curbside pickup to sorted curbside pickup, City shall notify City at least 120 days prior to the date of the proposed change.
 - ii. Recyclable materials defined. For the purpose of this Contract, recyclable materials include but are not limited to: newspaper, magazines, office paper, junk mail, cardboard, clear container glass, colored container glass, aluminum cans, tin cans, all plastics numbered 1-7, and such other materials as are mutually agreed upon in writing by Contractor and City, which are collected by Contractor pursuant to subparagraph (i) of this Paragraph 6. Recyclables must be deposited in the recycling bins provided by the City, or similar bins clearly labeled as recyclables, as a requirement for pick up.
 - iii. Time of collection. Contractor shall collect the recyclable materials placed at the curbside for collection every other week, regardless of the weather conditions. Collection shall be on the same day of the week as garbage collection service. Collection schedules for holidays will be maintained in accordance with the present holiday schedule.

- iv. Container purchase and distribution. City shall purchase and distribute on a door-to-door basis, at City's sole cost and expense, one colored container to each eligible residence in the area of service. During the term of this Contract, the ownership of the containers purchased by City shall rest with the City, and on termination of the Contract the ownership and right to dispose of the container shall be solely the decision of the City.
- v. Replacement of containers. The parties acknowledge that from time-to-time a resident may lose or otherwise destroy the containers supplied by Contractor. City will assume responsibility for the replacement of lost or destroyed containers during the term of this Contract by making containers available for purchase by residents. The City shall not be bound to bear the cost of replacing containers.
- vi. Transportation of materials. Contractor shall transport the collected recyclable materials to a material processing facility and Contractor shall have responsibility for the sale of such materials in a timely manner. No recyclable materials, may be disposed of in a landfill or other manner than identified in this agreement.

Contract. Contractor assumes all responsibility and liability for storage and disposal of the recyclable materials in the event it is unable to sell the recyclable materials.

- vii. Labor and costs. Contractor shall, at its sole cost and expense, except as otherwise provided herein, furnish all labor and equipment required to perform curbside collection, processing and marketing pursuant to this Contract.
- viii. Missed pickups. In the case of a missed pickup called in by a resident, Contractor shall arrange for the pickup of all materials the same day the Contractor is notified of the missed pickup or not more than twenty-four (24) hours after notice of the missed pickup is received.
- ix. Number of collection units. Contractor shall provide an adequate number of collection-recycling vehicles as described in subparagraph (x) of this Paragraph 6, and such additional transportation vehicles as are necessary to perform its responsibilities under this Contract.
- x. Type of collection units. Contractor shall use collection units to perform its responsibilities and such additional vehicles required to access areas in

the City inaccessible to the collection units. Collection units and other vehicle types shall be subject to the approval of the City.

- xi. Maintenance, cleanliness and identification of collection units. The collection units must be licensed in the State of Illinois and shall operate in compliance with all applicable State, Federal and Municipal regulations. All vehicles must be manufactured and maintained to conform with ANSI standards. All vehicles shall be kept in proper repair and sanitary condition. Each vehicle shall bear the name and telephone number of the Contractor.
- xii. Safety requirements. Contractor shall comply with ANSI, OSHA, Industrial Commission and other Federal, State, IEPA and local laws and regulations applicable to the operation of recycling collection vehicles and a curbside recycling service. No vehicle shall be overloaded.
- xiii. Employer training. Contractor shall use only properly trained employees. Contractor shall further certify that each employee assigned to drive a vehicle possesses a valid State CDL license and other licenses required by law or regulation.
- xiv. Employee appearance. Contractor shall require employees to be courteous at all times, work quietly and not trespass or loiter. Clothing shall be neat and clean as practicable. Shirts shall be required at all times.
- xv. Contamination. Non-recyclable materials placed in a recycling bin shall not be collected by Contractor. Contractor shall leave a completed form in the container explaining the reason the non-recyclable materials are not collected. City reserves the right to review and approve the standard form used by the Contractor.
- xvi. Number of employees. An adequate number of personnel shall be provided by the Contractor to perform its responsibilities under this Contract.
- xvii. Standard performance. All of Contractor's responsibilities under this Contract shall be performed to the satisfaction of the City and in a manner consistent with the standards imposed in the Garbage and Refuse Collection and Disposal Contract previously entered into.
- xviii. Reports. Contractor shall file with the City written reports pursuant to Exhibit" A" attached hereto and fully incorporated by this reference.

7. SCHEDULE OF PERFORMANCE.

Contractor shall perform those services set forth in Paragraph 6 entitled Scope of Service. The Schedule of Performance may be modified by the mutual written agreement of the City and Contractor. If Contractor does not satisfy the Schedule of Performance, the City may exercise its rights as specified in Paragraph 14.

8. CHARGES FOR RESIDENTIAL SERVICE

- a. Base price. Contractor shall be compensated by the City at the amount of Two Dollars and 70/100 (\$2.70) per month per household unit. The number of household units entitled to receive service and the monthly compensation paid shall be determined on the same basis as set forth in Paragraph 10 of the September 1, 2013 Garbage and Refuse Collection and Disposal Contract.
- b. Revenues. The amount of gross revenue accrued each month from the sale of recyclable materials shall be retained by Contractor.

9. EXPANSION PROGRAM.

- a. Proposal for expansion. If, during the term of this Contract, City desires to expand the curbside recycling program, City shall submit to Contractor a written proposal for such expansion (hereinafter called "expansion proposal"). The expansion proposal shall include a description of the nature of the service to be performed, the term of the proposed service (not to exceed the then unexpired term of this Contract), and the proposed payment to Contractor. Such expansion proposal shall be submitted to Contractor not less than ninety (90) days prior to the proposed date of expansion.
- b. Response by Contractor. Upon receipt of the expansion proposal from City, Contractor shall have thirty (30) days in which to submit a written response to City.
- c. City determination. Following receipt of Contractor's written response, City shall have sixty (60) days in which to accept or reject Contractor's response. During these sixty (60) days, City and Contractor agree to negotiate in good faith any terms or conditions in the expansion proposal and Contractor's response thereto upon which there is disagreement. If City and Contractor fail to reach an agreement with respect to the terms and conditions for expansion of the curbside recycling program within the time specified herein, Contractor shall

continue to perform curbside recycling in the area of service specified herein for the remaining term thereof, subject to the provisions of Paragraphs 14 and 15.

10. FREE SERVICE TO CITY FACILITIES.

During the term of this Contract, the Contractor agrees to furnish free collection and disposal service for recyclables to all facilities which are either owned or leased by the City.

11. INSURANCE.

Contractor shall obtain and maintain throughout the term of this Contract, at Contractor's sole cost and expense, not less than the insurance coverage set forth in Paragraph 15 of the Garbage and Refuse Collection and Disposal Contract, incorporated herein by this reference. All insurance will be by insurers acceptable to the City and authorized to do business in the State of Illinois. The insurance shall hold harmless the City of the actions of Contractor and Contractor's subcontractors.

12. INDEMNIFICATION AND HOLD HARMLESS.

Contractor agrees to indemnify, hold harmless and defend City, its officers, employees, agents and servants, from and against any and all liability, claims, demands, actions or suits of whatsoever character or kind, arising or resulting from, or in any way connected with, Contractor's performance of this Contract, the operations of Contractor, its agents, employees or subcontractors, or the failure of Contractor to comply with the provisions and requirements of all applicable permits, licenses, laws or regulations.

13. HANDLING OF COMPLAINTS.

Any complaint made to the Contractor shall be given prompt and courteous attention, and in case of alleged missed schedule collections, the Contractor shall investigate, and if such allegations are verified, the Contractor shall arrange for the pickup of all materials the same day the complaint is registered or not more than twenty-four (24) hours after the complaint is received.

14. TERMINATION.

- a. In the event Contractor defaults in the performance of any of the agreements or covenants to be kept, done or performed under the terms of this Contract, City shall notify Contractor in writing of the nature of such default. Within fifteen (15) days following such notice, Contractor shall:
 - i. Correct the fault; or in the case of a default not capable of being corrected within fifteen (15) days, Contractor shall commence correcting the default with due diligence on terms and conditions solely acceptable to the City.
- b. If the Contractor fails to correct the default as provided above, City, without further notice, shall have all of the following rights and remedies which the City may exercise singly or in combination;
 - i. Correct the fault; or in the case of a default not capable of being corrected within fifteen (15) days, Contractor shall commence correcting the default with due diligence on terms and conditions solely acceptable to the City.
 - ii. The right to enter into an agreement with others to perform the services otherwise to be performed by Contractor hereunder or to perform such services itself.

15. INSOLVENCY OF CONTRACTOR/TERMINATION OF CONTRACT.

Either the appointment of a receiver to take possession of all or substantially all of the assets of Contractor, or a general assignment by Contractor for the benefit of creditors, or any action taken by or suffered by Contractor under any insolvency or bankruptcy act shall constitute a breach of this Contract by Contractor and shall, at the option of the City, terminate this Contract.

16. LAW TO GOVERN.

This Contract is entered into and is to be performed in the State of Illinois. City and Contractor agree that the law of the State of Illinois shall govern the rights,

obligations, duties and liabilities of the parties to this Contract and shall govern the interpretation of this Contract.

17. CONTRACTOR'S REPRESENTATIONS.

Contractor represents that:

- a. Contractor is duly organized and existing in good standing under the laws of Illinois.
- b. Contractor has the power, authority and possesses all permits necessary and has the legal capacity to enter into and perform its obligations set forth in this Contract, and the execution, delivery and performance hereof has been duly authorized.
- c. This Contract has been duly entered into and delivered and, as of the date hereof, constitutes a legal, valid and binding obligation of Contractor, enforceable in accordance with its terms.

18. MANNER OF CONDUCTING BUSINESS.

The Contractor shall undertake to perform all services required of it hereunder in a neat, orderly and efficient manner, and shall use care and diligence in the performance of this Contract. The Contractor shall use its best efforts to prohibit an drinking of alcoholic beverages and use of illicit drugs by any employee of the Contractor while on duty or in the course of performing its obligations under this Contract.

19. FAILURE OF PERFORMANCE BY THE CONTRACTOR.

In the event of any failure, or allege failure, on the part of the Contractor to perform its obligations required under the terms of this Contract, and in the event that said failure to perform shall continue for a period of more than forty-eights (48) hours after written notice is given to the Contractor by the City, specifying the particular obligations that the Contractor has failed to perform and provided that such failure of performance shall not be due to strikes, catastrophe or act of God or other cause beyond the Contractor's control, then the City may, at its option, make such arrangements for said acts to be performed as the City may see fit, and may deduct any and all reasonable costs incurred by the City in connection therewith from the amount hereinabove specified as payment to the Contractor for such services. In the event that

the Contractor and the City disagree as to whether or not the Contractor has failed to perform any of its obligations hereunder, then the parties shall immediately proceed to refer said issue to non-binding arbitration, one arbitrator to be appointed by the City, one arbitrator to be appointed by the Contractor and a third arbitrator to be selected by the two arbitrators so designated.

20. PERFORMANCE BOND.

It is understood that the Performance Bond previously furnished to the City by Contractor pursuant to Paragraph 24 of the Garbage and Refuse Collection and Disposal Contract shall be applicable to the obligations imposed on the Contractor pursuant to this Contract. All other terms and conditions of Paragraph 24 related to Performance Bond shall be applicable to this Contract.

21. MAINTENANCE OF PERMITS AND LICENSES.

Contractor, at its sole cost and expense, shall obtain and maintain throughout the term of this Contract all permits, licenses and approvals necessary or required for Contractor to perform the work and services described.

22. COMPLIANCE WITH LAWS ORDINANCES AND REGULATIONS.

- a. Contractor agrees that, in the performance of work and services under this Contract, Contractor will qualify under and comply with any and all Federal, State and local laws and regulations now in effect, or hereinafter enacted during the term of this Contract, which are applicable to Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.
- b. Contractor shall, at all times comply with said applicable laws for the transportation of waste and shall provide to the City (1) within five days after the receipt thereof, true, correct, and complete copies of any written notice of noncompliance or true and accurate transcripts of any oral notice of noncompliance issued or given by any Governmental body; and (2) prompt written notice describing the occurrence of any event or the existence of any circumstances which does or may result in noncompliance or nonadherence, or of any action or proceeding of any nature alleging the same.

23. EXCLUSION OF WARRANTIES.

THE CITY MAKES NO WARRANTY OF MERCHANTABILITY, EXPRESS OR IMPLIED, REGARDING THE RECYCLABLE MATERIALS WHICH ARE THE SUBJECT OF THIS CONTRACT. THE CITY, FURTHER, MAKES NO WARRANTY THAT THE RECYCLABLE MATERIALS ARE FIT FOR ANY PARTICULAR PURPOSE, AND THE RECYCLABLES ARE MADE AVAILABLE TO CONTRACTOR FOR HAULING PURSUANT TO THIS CONTRACT AS IS.

THE RECYCLABLE MATERIALS WILL HAVE BEEN EXAMINED BY CONTRACTOR PRIOR TO ACCEPTANCE FOR HAULING AND CITY HAS AGREED TO MAKE THE MATERIALS AVAILABLE FOR HAULING AND RECYCLING ONLY ON CONDITION THAT THE CONTRACTOR HAS FULLY EXAMINED THE MATERIALS PRIOR TO TAKING POSSESSION OF THEM. THE CITY ASSUMES NO RESPONSIBILITY FOR THE SELECTION OR FURNISHING OF RECYCLABLE MATERIALS IN A FASHION SUITABLE TO MEET THE INDIVIDUAL NEEDS AND PURPOSES OF CONTRACTOR, MONTGOMERY TRUCKING, INC., OR ANY OTHER PARTY.

24. ADJUSTMENT TO CHARGE FOR CURBSIDE RECYCLING SERVICE.

In addition to the adjustment to the charges for residential service as may be made based upon the number of residential units served in accordance with Paragraph 8 herein and in accordance with Paragraph 11 of the Garbage and Refuse Collection and Disposal Contract between the parties, at any time after September 1, 2013, the Contractor may request an adjustment to the Two Dollars and 70/100 (\$2.70) per household unit charge in accordance with one or more of the following criteria:

- a. The Contractor may request that the per household unit charge be increased for each fiscal year commencing with the fiscal year starting May 1, 2014. The increase requested, if any, shall be equal to the percentage increase of a Cost of Living Index agreed to by the parties and published by the U.S. Department of Labor, Bureau of Labor Statistics, as of March 31 of the current year from said agreed upon Index from March 31 of the previous year. Said increase, if any, shall be effective as of the 1st day of May of the fiscal year immediately following the calculation. As an example, the increase, if any, to be effective on May 1, 2014 shall be determined by comparison between the agreed upon Index as of March 31, 2013 and the agreed upon Index as of March 31, 2014.
- b. In addition to the potential increase provided for in subparagraph (a) hereof, the Contractor may be entitled to seek an increase in the per residential unit charge if the charge in the nature of a dumping fee that the Contractor pays to Dittmer Recycling, Dubuque, Iowa, or any other material processing facility, for each

cubic yard of recyclable materials dumped at the Dittmer Recycling or other material processing facility increases beyond the present aggregate charge. In the event said charges increase, then eighty percent (80%) of said increase relating to recycling materials picked up from household units in the City minus the net income earned by Contractor for the sale of recyclable materials, may be requested as an additional increase to the monthly invoice submitted to the City. If agreed to, the City would then pay to the Contractor on a monthly basis eighty percent (80%) of the increased charge incurred by the Contractor for the previous month minus the net income earned by Contractor for the sale of recyclables. Records submitted by the Contractor of dumping fees paid to Dittmer Recycling or to any other processing facility shall be evidence of the amount so paid by the Contractor. Records submitted by the Contractor of income earned for the sale of recyclables shall be evidence of the amount received by the Contractor.

- c. In the event that the Contractor makes a request for an adjustment in accordance with the foregoing, the City shall have sixty (60) days from the date of its receipt of said request to consider an act on said request. In the event that the City approves the adjustment based on said request, then the adjustment shall become effective upon said approval by the City. In the event that the City does not approve said request, it shall notify the Contractor of its failure to approve said request and the Contractor shall then have thirty (30) days to accept the failure of the City to agree to an adjustment or to terminate the Contract.
- d. In the event that the Contractor elects to terminate the Contract, it shall give the City written notice of its election to so terminate the Contract, which notice shall specify the effective date on which the Contract shall be terminated, which date shall be no sooner than ninety (90) days from the date that said written notice is given.
- e. In no event shall the effective date of said termination occur prior to May 1, 2014. In the event that the Contract is terminated, neither the City nor the Contractor shall have any further obligations under the Contract after the effective date of the termination.

25. NOTICES.

All notices required or contemplated by this Contract shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the parties as follows:

CITY: City Administrator,
312 1/2 North Main Street
Galena, Illinois 61036

CONTRACTOR: Montgomery Trucking, Inc.,
929 Fulton Street, P.O. Box 6081
Galena, Illinois 61036

or such other address as the parties may designate in writing.

26. WAIVER.

A waiver of any breach of any provision of this Contract shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

27. AMENDMENT.

This Contract may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

28. ENTIRETY.

This Contract and the previously entered Garbage and Refuse Collection and Disposal Contract contain the entire Contract between the parties as to the matters contained herein. Any oral representations or modifications concerning this Contract shall be of no force and effect.

CITY OF GALENA, a Municipal Corporation

BY: Terry Renner
Terry Renner, Mayor

Attest to:

Mary Beth Hyde
Mary Beth Hyde, City Clerk

MONTGOMERY TRUCKING, INC.

BY: John T. Harty
President

Attest to:

Be [Signature]
Vice President

EXHIBIT "A"

REPORTS AND RECORDS

Reports. Contractor shall submit to City the following reports on forms agreed to by the parties during the remaining term of this Contract and any subsequent extensions.

Monthly Reports. On or before the last day of each month of each year during the term of this Contract, Contractor shall submit a monthly report to the City, which includes at least the following:

1. Summaries of tonnages of recyclable materials recovered for the month prior. The City acknowledges that tonnages may be well-reasoned estimates since the Contractor does not collect recyclables exclusively in Galena;
2. Summaries of tonnages of non-recyclable materials collected within the City limits and deposited in landfills pursuant to the Garbage and Refuse Collection and Disposal Contract. The method of calculating tonnages collected within the City shall be subject to the agreement of the parties and may include estimating if the collection route includes properties and refuse outside of the City;

Contractor's Records. Contractor shall maintain its books and records related to summaries of garbage collected and costs and expenses of land filling in accordance with the following minimum requirements:

1. Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection or audit upon written request by the City. The records shall be available at the City's address.