

This Ordinance:
___ requires
X does not require
an amendment to the Code of Ordinances.

ORDINANCE NO. 2001-12-159

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
EXTENDING THE TERM OF AN AGREEMENT TO PROVIDE RESIDENTIAL CURBSIDE
RECYCLING COLLECTION AND PROCESSING SERVICES
(ABC SANITARY HAULING/RECYCLING),
AND AUTHORIZING THE CITY ATTORNEY TO EXECUTE A STIPULATED CONSENT DECREE
(CITY OF URBANA V. ABC SANITARY HAULING/RECYCLING, 99-L-39)

WHEREAS, The City of Urbana and ABC Sanitary Hauling/Recycling (referred to in this Ordinance as "the contractor") are parties to a contract entitled "An Agreement to Provide Residential Curbside Recycling Collection and Processing Services" (referred to in this ordinance as "the contract"), pursuant to which the contractor provides the collection and processing services for the City's Residential Recycling Program; and

WHEREAS, The City of Urbana is involved in litigation with the contractor, in Champaign County Circuit Court case # 99-L-39 (referred to in this ordinance as "the litigation"), concerning the scope of the contract and the ownership and use of the name "U-Cycle" and related designations and logos; and

WHEREAS, the City and the contractor desire to settle the litigation; and

WHEREAS, the City Council determines that it would be in the best interest of the City to extend the term of the contract by two years, from March 31, 2002 to March 31, 2004, but with expanded collection of plastics to include plastics numbered 3 through 7, and deletion of the profit-sharing requirement of the contract retroactive to January 1, 1998, under the same rates as the contract presently contains; and

WHEREAS, the office of the City Attorney and the contractor have negotiated and prepared an agreement entitled "An Agreement Extending the Term of an Agreement to Provide Residential Curbside Recycling Collection and Processing Services" (referred to in this ordinance as "Agreement to extend the contract"), a copy of which is attached to this ordinance and incorporated into this ordinance by reference, by which the contract would be

**AN AGREEMENT TO PROVIDE RESIDENTIAL CURBSIDE RECYCLING
COLLECTION AND PROCESSING SERVICES**

In consideration for the mutual covenants and conditions contained in this Agreement, the City of Urbana, Illinois, a municipal corporation (hereinafter called "City") and ABC Sanitary Hauling/Recycling (hereinafter called "Contractor") agree as follows:

Section 1.00 Term

This Agreement shall commence March 24, 1997 and shall remain in full force and effect through March 31, 2002, unless sooner terminated as provided herein.

Section 2.00 Definitions

The following words and phrases, when used in this Agreement, shall have the meaning given to them in this Section:

Agreement: means this Agreement.

Approved Recycling Containers: means a container, bin or bag to contain recyclable materials, as approved by the City.

City: means the City of Urbana, Illinois, a municipal corporation acting through the Chief Administrative Officer or official designated by the Chief Administrative Officer.

Contractor: ABC Sanitary Hauling/Recycling

Curbside: means that portion of right-of-way adjacent to paved or traveled City roadways within five (5) feet thereof.

Curbside Collection: means the collection of recyclables placed curbside in accordance with City ordinances regulating the placement of same.

Dwelling: means any building, but not a travel trailer, which is exclusively designed for or used for one (1) or more dwelling units.

Dwelling Units: means one (1) room or suite of two (2) or more rooms in a building, designed for and used by one (1) family for living and sleeping purposes, containing its own kitchen and bathroom facilities, and having its own independent entry/access from the exterior of the structure or from a common interior hallway.

Person: means any individual, partnership, co-partnership, firm company, corporation, association, joint stock company, trust estate, political subdivision, state agency, or any

other legal entity, or their legal representative, agent or assigns.

Recyclable Materials or Recyclables: means newspaper [ONP]; corrugated cardboard [OCC] (chipboard); magazines [OMG], residential mixed paper [RMP] (envelopes, office paper, etc.); clear, brown, and green cullet food and beverage glass [UFBG] containers; steel (tin), bi-metal, and aluminum can [UFBC] containers (including empty aerosol containers); polyethylene terephthalate [PET], (SPI code #1) natural and pigmented containers; and high-density polyethylene, [HDPE], (SPI code #2) natural and pigmented containers; which have not contained lubricating oils, agricultural chemicals or other toxic materials.

Refuse: means all nonhazardous wastes. For the purposes of this Agreement, the terms "garbage", "refuse", "rubbish", "solid waste", "trash", "waste", "household waste", and "residential solid waste" shall be synonymous; but the term shall not include: sewage sludge, recyclables or landscape waste which is source separated for recycling purposes.

Residential Dwelling: means any single or multi-family dwelling of six (6) or fewer units within the corporate limits of the City.

Section 3.00 Compliance with Laws.

The Contractor shall give all notices required by, and comply with, all applicable City, State of Illinois and Federal laws.

The Contractor certifies that it is not barred from bidding on this procurement as a result of a conviction for the violation of State of Illinois laws prohibiting bid-rigging or bid-rotating per 720 ILCS 5/33E-3 and 5/33E-4. The Contractor further certifies that it is not delinquent in the payment of any indebtedness owed to the City, or in payment of any tax administered by the Illinois Department of Revenue per 65 ILCS 5/11-42.1-1. The Contractor has executed the City of Urbana Certification of Compliance and has placed it on file with the City.

Section 4.00 Equal Employment Opportunity

During the term of this Agreement, the Contractor and any subcontractor shall comply in all respects with the City's Equal Employment Opportunity Ordinance. The Contractor has executed the City of Urbana Equal Employment Opportunity Contractor and Vendor Qualification Form and has placed it on file with the City.

Section 5.00 Drug Free Workplace

During the term of this Agreement, the Contractor and any subcontractor shall comply in all respects with the Drug Free Workplace Act of Illinois, 30 ILCS 580/1 et. seq. The Contractor has executed the City of Urbana Drug Free Workplace Certification Form and has placed it on file with the City.

Section 6.00 Subcontractors

The Contractor shall perform the work with its own personnel and under the management and supervision and control of its own organization unless otherwise approved by the City in writing. Any and all subcontractors used for collection or processing by the Contractor shall be acceptable to, and approved in advance, by the City. The City's approval of any such subcontractor shall not relieve the Contractor of full responsibility and liability for the performance of the work. All work performed under any subcontract shall be subject to all of the provisions of the Agreement, and every reference in the Agreement to "Contractor" shall be deemed also to refer to all subcontractors of Contractor.

Section 7.00 Taxes, Licenses and Permits

The Contractor shall pay all sales, use, property, income, and other taxes that are lawfully assessed against the City or the Contractor in connection with the Contractor's facilities and the work included in this Agreement. By law, the City is exempt from paying federal excise tax, state and local retailers' occupation tax, state and local service occupation tax, use tax and service use tax. The City's tax-exempt number shall be furnished upon request of the Contractor.

Immediately upon the execution of this Agreement, the Contractor shall secure and pay for, at its own expense, all necessary permits, licenses, and certificates of authority required to complete the work, and shall comply with all requirements of such permits, licenses, and certificates of authority to operate in the City, including inspections. The Contractor shall keep and maintain all such licenses, permits, and certificates of authority in full force and effect throughout the term of this Agreement.

Section 8.00 Insurance

The Contractor shall carry all insurance coverages required by law or which would normally be expected for the business of refuse/recycling collection and processing services. In addition, the Contractor shall carry, at its own expense, at least the following insurance coverages:

Workers' Compensation and Occupational Diseases Insurance:
Statutory amount for Illinois.

General Liability Insurance:
Bodily injury, property damage, including broad form contractual insurance, with limits of not less than \$1,000,000 each occurrence/\$2,000,000 aggregate.

Automotive Liability Insurance:
Bodily injury, property damage, with limits of not less than \$1,000,000 each occurrence. This insurance must include non-owned, hired, leased, or rented vehicles, as well as owned vehicles.

The Contractor shall include the City as an additional named insured on both General Liability and Automotive Liability insurance policies. The insurance coverages shall be written with insurance companies acceptable to the City. The Contractor shall furnish to the City a Certificate of Insurance attesting to the respective insurance coverage for the full Agreement term. These coverages shall be in place prior to the Contractor starting any work under this Agreement. No payment shall be made to Contractor until proof of coverage and additional named insured has been received and reviewed for acceptability by the City's Corporation Counsel.

All insurance policies and certificates of insurance shall contain a provision indicating that the insured and any additional named insured shall receive not less than thirty (30) days prior written notice prior to the effective date of any cancellation or reduction in coverage.

Section 9.00 Contractor's Indemnity

The Contractor agrees to and shall defend, hold harmless and unconditionally indemnify the City, its officers and employees, against and for all liabilities, costs, expenses, (including attorney's fees and expenses of investigation), claims and damages which the City may at any time suffer or sustain or become liable for by reason of any accidents, damages or injuries (including injuries resulting in death) either to persons or property or both, of Contractor or City or employees of either party, or to any other parties, in any manner caused by or resulting from acts or failures to act by the Contractor or its employees or agents in the performance of this Agreement.

The Contractor expressly understands and agrees that any performance security or insurance protection required by this Agreement, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless, and defend the City.

Section 10.00 No Waiver by Payment

Payment for any work under this Agreement shall not relieve the Contractor from its responsibility for failure to abide by the terms of this Agreement.

Section 11.00 Risk of Loss

The work and everything pertaining thereto, except promotion activities, shall be performed and maintained at the sole risk and cost of Contractor. Contractor shall have no claim against the City because of any damage or loss to the work or Contractor's equipment, materials, or supplies arising out of this contract other than a claim for negligence by the City or its employee(s) or a claim for payment hereunder.

Section 12.00 Performance Security

The Contractor agrees that the City may deduct the sum of four thousand dollars (\$4000.00) from each of the first five (5) monthly payments due Contractor under this Agreement and place such funds in an interest bearing account ("performance guaranty account"). All interest accruing in the performance guaranty account shall be the property of the Contractor and the interest may be withdrawn at any time upon request by the Contractor. The City may withdraw any funds from this account, from time to time, to pay debts or expenses of the Contractor which have become delinquent, including but not limited to, the payment of wages, costs of supplies, materials, and insurance premiums for insurance required under this Agreement, which have become delinquent or to reimburse the City for any loss resulting from the failure of the Contractor to perform its obligations under this Agreement. Any funds remaining in the performance guaranty account at the termination of this Agreement, shall be delivered to Contractor if there are no outstanding, unresolved issues regarding possible claims against funds in the performance guaranty account.

Section 13.00 Assignment of Agreement

No assignment of the Agreement or any right accruing under this Agreement shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be withheld without just cause; in the event of any assignment, the assignee shall assume the liability of the Contractor.

Section 14.00 Inspection

The City may inspect the work performed for compliance with the Agreement. The Contractor shall furnish all reasonable assistance required by the City or its representative for the proper inspection of the Contractor's premises, facilities,

equipment or work. Inspections are not required to be announced by the City or its authorized agent.

Section 15.00 Change in Service

Throughout the term of the Agreement, federal, state, county or local legislation may change and may impact the terms of this Agreement. In addition, the City or Contractor may wish to change the type of service provided during the term of the Agreement (e.g. type of material collected, method of handling, method of collection, stops served, etc.). The Contractor and the City agree to negotiate those items which constitute an impact to the Agreement, and agree to settle issues in accordance with Section 25.00 Disputes and Remedies.

Section 16.00 Assignment of Equipment

Upon execution of this Agreement the City shall transfer and assign ownership of two (2) recycling trailers, vehicle identification numbers 1M9SU2018G2079008 and 1M9SU2018G2079009, and twelve (12) metal bins with a capacity of three cubic yards each to the Contractor. This equipment is assigned in "as is" condition and the City makes no warranty, expressed or implied.

In consideration, the Contractor shall for the term of this Agreement, provide weekly collection and processing services for recyclable materials to all City buildings as listed herein: City Building complex, 400 S. Vine St.; Community Development Department, 115 W. Main St. (until offices move to City Building complex); Public Works Department, 706 S. Glover Av.; Urbana Library, 201 S. Race St.; and Fire Department substations, 1407 N. Lincoln Av. and 2103 S. Philo Rd.

Section 17.00 Exclusive Provider

The Contractor shall have the sole and exclusive privilege to provide collection and processing services for the City's recycling program "U-CYCLE, Urbana's Recycling Program".

Section 18.00 Force Majeure

The performance provisions of this Agreement are subject to the following limitation: If by reason of force majeure the Contractor is unable in whole or in part to carry out the obligations on its part contained in this Agreement, it 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 Contractor.

The Contractor agrees, however, to remedy with all reasonable dispatch the cause or causes preventing the Contractor 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 Contractor, and the Contractor 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 Contractor unfavorable to the Contractor. The Contractor shall advise the City at the earliest possible moment concerning any events constituting a force majeure hereunder.

In case of a tornado, flood, hurricane, ice storm, disabling snow storm, or other disaster or other acts of nature, the City may grant the Contractor a temporary variance in the Contractor's regular schedules and routes at the option of, and according to conditions set by the City.

Section 19.00 Adjudged Bankrupt

In the event the Contractor shall be adjudged bankrupt, either by voluntary or involuntary proceedings, then this Agreement shall immediately terminate, and in no event shall this Agreement be treated as an asset of Contractor after adjudication of bankruptcy. If Contractor shall become insolvent, or fail to meet its financial obligations, then this Agreement may be terminated at the option of the City upon fifteen (15) days written notice to Contractor and in no event shall this Agreement be treated as an asset of Contractor after the exercise of said option. This Agreement is not assignable by Contractor without written permission of the City, either voluntarily or involuntarily, or by any process of law, except as above provided, and shall not be or come under the control of creditors, or trustee or trustees of Contractor in case of bankruptcy or insolvency of Contractor, but shall be subject to termination as above provided.

Section 20.00 Scope of Work

The work under the Agreement shall consist of the items contained in the Agreement, including all the supervision, materials, equipment, labor and all other items necessary to

provide collection and processing services in full compliance with the Agreement documents.

Section 21.00 Operation

21.01 Units to be Serviced

The number of units stated below is a good faith approximation of the total number of occupied, and therefore serviceable, residential dwellings in the City. The Contractor shall provide weekly collection service for all residential dwellings customers who place recyclables at curbside before 7:30 a.m. on the day of collection during the term of the Agreement. At the time of execution of this Agreement there are approximately 8,074 residential dwelling units.

21.02 Disabled Customers

The Contractor shall provide front or back-door collection service to any customer who, by reason of physical or mental limitation, are disabled customers or elderly and are unable to place recyclables at curbside. The City is aware of approximately thirty-six (36) such customers. Residents will be required to provide an acceptable means of verification to the Contractor and the City. Any appeals will be determined by the City.

21.03 Holidays and Emergencies

The Contractor may recognize the following holidays for the purpose of this Agreement:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

However, when a holiday occurs and impacts the regular collection schedule, the Contractor will still be expected to service all collection zones, by shifting the remainder of the affected week back one day, or, with regard to Independence Day, by shifting the hours of operation.

It is recognized that weeks containing unforeseen emergencies will require alteration of the schedule for those situations only. It shall be the Contractor's responsibility, to inform residents of any changes from regular collection resulting from an emergency. However, if the Contractor alters the regular collection schedule due to emergencies for more than five (5) times in a ninety (90) day period, the City may find this to be cause for termination or suspension under Section 25.03.03.

21.04 Cleanliness

The Contractor shall handle all approved containers with reasonable care to avoid damage and shall exert all reasonable precautions to prevent spilling or scattering of recyclable materials. The Contractor shall make collections with a minimum of noise and disturbance to the residential dwelling.

The Contractor shall clean up any scattered or spilled material within four (4) hours after either oral or written notice from the City received by the Contractor before noon on a business day. The Contractor shall clean up any scattered or spilled material within one (1) business day after either oral or written notice from the City received by the Contractor after noon on a business day or on a non-business day. If the Contractor fails to so clean up within the specified time, the City may cause such work to be done and deduct the reasonable cost thereof from any payments due and owing the Contractor, in addition to any other remedies provided herein.

21.05 Office, Business Days and Hours

The Contractor shall maintain a local office within the Urbana-Champaign area and telephone service with appropriate personnel through which the Contractor can be contacted during the business hours of 8:00 am. until 5:00 pm. on all days except Saturday, Sunday, and holidays as specified herein. The telephone number shall be listed in the Urbana-Champaign telephone directory.

21.06 Safety

The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work of this Agreement. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws and regulations shall be observed, including safeguards on machinery and equipment, the elimination of hazards, and worker safety training.

In the event of accidents of any kind which involves the general public and/or private or public property in the City, the Contractor shall notify the City within two (2) working days. Upon request of the City, the Contractor shall provide such accounting of details and/or copies of written accident reports as the City may require.

21.07 Employees and Conduct

The Contractor shall undertake to perform all collection services rendered hereunder in a neat, orderly, and efficient manner; to use care and diligence in the performance of this Agreement; to provide competent, capable, and courteous personnel on collection crews; and to provide courteous and knowledgeable personnel in its customer service function. The Contractor's drivers and crew members shall be attired in a neat, professional-like manner. A specific uniform is not required. All vehicle operators shall carry valid Illinois state driver's license for the class of vehicle operated.

21.08 Reports and Records

The Contractor shall collect and maintain, separate from all other business records and accounts, complete and accurate records and ledgers of service accounts relating to the performance of the Agreement. Such records and accounts shall, with reasonable notice, be open to inspection by the City and its agents.

The Contractor shall furnish on forms approved by the City, monthly reports on the services performed within fifteen (15) days of the end of every month, for the term of the Agreement, to the City.

The reports shall include, but is not limited to:

- (a) the number of daily collections;
- (b) the quantity of materials collected by material type;
- (c) the revenue obtained from sale of each recyclable material;
- (d) The quantity of recyclables alternatively dispose of;
- (e) information on the quality of service being provided (e.g. all complaints of missed collections, timeliness and problems as reported by residents to the Contractor).

Section 22.00 Collection and Processing Specifications

22.01 General

The Contractor shall collect, without respect to quantity, all properly prepared recyclables found in approved recycling containers and safely transport the same to the processing facility of the Contractor's choice. Recyclable materials that will not fit within recycling containers due to its size and is less than one (1) cubic yard in volume, will be collected if it is placed adjacent to the containers and it is obviously intended for

collection. Participation by residential dwellings in this program will be voluntary.

22.02 Recycling Service Performed at No Extra Cost

The Contractor shall collect and process recyclable materials from residential dwelling units and no separate fees, costs or stickers will be assessed or required by the Contractor to enable collection.

22.03 Recyclable Materials to be Collected

Participating dwelling units will perform a two-stream sort of the following recyclable materials, which shall be collected under this Agreement:

Commingled Paper Fibers: (to be placed into one recycling container) 1. ONP - Newspaper and inserts 2. OCC - Corrugated cardboard, fiberboard 3. OMG - Magazines, catalogs 4. RMP - Residential mixed paper (mail, computer paper, ledger, etc.)

Commingled Containers: (to be placed into the other recycling container) 1. UFBC - Food & beverage cans, and empty aerosol cans (steel, bi-metal, aluminum) 2. UFBG - Food & beverage glass containers (flint, brown and green) 3. PET, SPI code #1 - Polyethylene terephthalate containers, natural and pigmented 4. HDPE, SPI code #2 - High-density polyethylene containers, natural and pigmented.

Containers which contained lubricating oils, agricultural chemicals or other toxic materials will not be collected.

22.04 Hours of Operation

Collection of recyclables shall not start before 7:30 a.m. nor continue after 7:30 p.m. on the evening of the same date. Exceptions to collection hours shall be affected only upon the mutual agreement of the City and the Contractor, holidays or when the Contractor reasonably determines that an exception is necessary in order to complete collection on an existing collection route due to unusual circumstances.

22.05 Collection Zones, Days

The City shall, as determined by the Director of Public Works, be divided into five (5) collection zones described as follows:

1. Monday - the area located on Exhibit B;
2. Tuesday - the area located on Exhibit B;
3. Wednesday - the area located on Exhibit B;

4. Thursday - the area located on Exhibit B; and
5. Friday - the area located on Exhibit B.

These zones have been divided so as to contain an approximately equal amount of potential stops, seventeen hundred (1700) in each. The boundaries for these collection zones may be modified by the City during the term of the Agreement to maintain an approximately equal number of residential dwellings (potential stops) in each. The Contractor will be expected to complete collection within the hours of operation as stated in Section 22.04 in all collection zones.

22.06 Frequency of Collection

The Contractor shall provide year-round collection to each participating residential dwelling unit on a weekly basis.

22.07 Location of Service

The Contractor shall collect recyclables curbside, except for Disabled Customers, in which case collection shall be provided either front or back-door.

22.08 Collection Equipment

The Contractor shall furnish all necessary equipment and labor to provide a two-stream commingled collection service, one stream being commingled fibers and the other being commingled containers, and shall at all times provide a sufficient amount of equipment and labor to maintain a completely adequate service. All recyclables collected by the Contractor shall be loaded, contained, and hauled in vehicles so that leaking, spilling, and blowing are prevented. All equipment must be maintained and operated in compliance with all local and state statutes, ordinances and regulations and to assure the safety of the collection personnel and residents of the City.

All vehicles shall be labeled to comply with all requirements for garbage hauling in the City. No signs or commercial advertising, except the Contractor's logo, shall be displayed on said vehicles. Equipment used for collection of recyclables will display the logo of the City's recycling program.

22.09 Household Recycling Containers

The Contractor shall, at its expense, acquire and provide an initial distribution of two (2) fifteen gallon recycling containers, at no cost, to each residential dwelling in the City prior to commencement of actual

collection under this Agreement. Following initial distribution, the Contractor shall maintain an adequate number of containers, to furnish replacements, as requested by customers within five (5) business days of customers request or notice by the city throughout the term of the Agreement. The Contractor may recover the actual acquisition cost of containers in excess of two (2) provided to a dwelling.

Such containers shall be "heat stamped" with the U-CYCLE program logo on both sides of the container and the "mobius loop" logo shall be printed on both ends. In addition, the Contractor may display his name and/or logo on the same side as the "mobius loop" logo. The City will assign any such 15 gallon containers remaining in its inventory to the Contractor.

While the Contractor is responsible to provide household recycling containers at its cost, it is understood that this provision was a part of the conditions of the RFP, and thus, the Contractor is being reimbursed by the City for such cost as a part of the annual Agreement price, for the term of the Agreement. Therefore, the Contractor shall not be entitled to any claim of ownership, or payment from the City for containers purchased, distributed and used in performance of this Agreement.

22.10 Preparation Requirements

Recyclable materials may be deemed by the Contractor to be unacceptable for collection if they are not properly prepared, separated, or located in accordance with requirements standardized by the City. If recyclable materials set out for collection are found to be in an unacceptable condition for recycling, the Contractor shall comply with the provisions set forth in Section 23.00 Customer Relations.

22.11 Title to Recyclables

Title to all recyclable materials, once placed out for collection for the U-CYCLE program, shall vest with the Contractor, to the extent the City may lawfully transfer ownership.

22.12 Promotion

The U-CYCLE program is well established within the City, and to provide program continuity the work described herein, and any and all educational and promotional activities, shall be conducted under the name and logo of "U-CYCLE, Urbana's Recycling Program."

The City shall, at its expense, provide for promotion and educational efforts, including the fact that the U-CYCLE containers are the property of the City of Urbana. The

Contractor agrees and acknowledges that an effective program requires community education and promotion, and therefore the Contractor agrees to aid and assist the City in such efforts (e.g. distribute fliers into recycling bins).

22.13 Processing of Recyclables

22.13.01 Cost

All aspects of processing, including but not limited to, the delivery, sorting, preparation, shipping, marketing, and alternative disposal; shall be provided by the Contractor at no additional cost to the City.

22.13.02 Primary Goal

The Contractor shall deliver all recyclable materials collected to a processing facility or facilities. The primary goal, and responsibility of the Contractor and facility, shall be to sort, prepare and otherwise process materials in a manner to maximize their value for sale and/or delivery to markets that will return such materials to the economic mainstream in the form of new raw materials or recycled products. These processing and marketing activities shall be the first and best efforts of the Contractor, and the Contractor shall initiate or take necessary actions, within its control, so as to recover ninety-five (95) percent of the gross quantity of materials collected each and every month during the term of this Agreement.

22.13.03 Secondary Measures

It is recognized that lack of markets and/or market conditions may arise during the term of the Agreement which are beyond the control of the Contractor and would preclude the primary goal. In such a case, the Contractor shall notify the City by submitting a written explanation of the situation, expected duration, and the Contractor's attempts to secure other markets or alternatives which could include re-use of materials in a secondary application. After reasonable consideration of the situation, the City will submit a written response advising the Contractor of the City's decision to allow use of any such alternatives. Implementation of any alternatives shall be of a secondary measure,

And the Contractor understands that it shall continue with efforts to find and secure markets that meet the primary goal.

22.13.04 Alternative Disposal

While the Contractor shall make every reasonable effort to collect and deliver materials in a condition to maximize the quantities to be processed, it is recognized that small quantities may be delivered in a condition making them unsuitable for processing or unable to meet market specifications. These quantities will not be required to be sold or delivered for use as production inputs and may be alternatively disposed of, including being landfilled. However, if the quantity of materials alternatively disposed of exceeds five (5) percent by weight of the monthly total of materials received for processing, then the Contractor shall submit, as a part of monthly reporting, a written explanation of the cause and recommendations to maintain non-recyclable waste below this percentage. The Contractor shall record any and all materials alternatively disposed as a part of reporting requirements pursuant to Section 21.08.

Section 23.00 Customer Relations

23.01 General Complaints

The Contractor shall cooperate with the City in minimizing complaints from the customers and other residents. An unreasonable number of continued complaints, as determined by a neutral arbitrator chosen by the City and the Contractor, shall be due cause for the City to terminate this Agreement under Section 25.03.03.

23.02 Processing of Complaint

23.02.01 Initial Field Response (During Collection)

Where the Contractor encounters any recyclables unacceptable for collection, or if any dispute arises between a resident and the Contractor as to the placing of containers, collection, or the nature of the Agreement or the like, the Contractor agrees that, in the first specific occurrence, courteous collection will be immediately made even though, in its opinion, it is improperly placed or contained as long as the recyclables are in approved recycling containers.

The Contractor shall post a notice (deficiency/remedy notice) with such customer, on a form approved by the City, noting the deficiency and the remedy. If any subsequent instances occur, the Contractor is not required to collect materials, but the Contractor is required to post a notice with the customer. The deficiency/remedy notices shall be a three-part carbonless form, with one copy to be posted with customers, the second copy to be submitted to the City by the second business day after initial customer posting, and the third copy shall be retained by the Contractor.

23.02.02 Initial Office Response

The Contractor shall give all complaints received by it prompt and courteous attention and shall respond to every customer from whom a complaint is received within one (1) business day after receipt of such complaint. If such complaint is about a missed collection, placed on or before 7:30 a.m., then the Contractor shall cause collection to be made within one (1) business day, or sooner, after receipt of such complaint.

23.03 Referral to City

If Contractor is unable to resolve a complaint in a manner satisfactory to both Contractor and the customer, then Contractor, within three (3) business days after receipt of such complaint, shall deliver notice to the City of such complaint, which notice shall include the name and address of the customer, the date and hour the complaint was received, the nature of the complaint, and Contractor's response to the complaint. The City shall arbitrate each such complaint within seven (7) business days of the receipt of the Contractor's notice, and the City's decision shall be final and binding on the Contractor. All complaints shall be reported to the City, pursuant to reporting requirements of Section 21.08.

Section 24.00 Penalties

The Contractor shall be liable to the City for penalties, in the amount of \$25, first incident of failure to perform as required below; \$50, second incident; and \$100 per incident thereafter which may occur in each month of the Agreement, except during the first ninety (90) days of the Agreement, upon determination by the City that performance has not occurred consistent with the following provisions:

- 1) Failure to pick up missed collections within twenty-four (24) hours on the day following the scheduled collection day.
- 2) Failure to complete collection by 7:30 p.m. on the scheduled collection day, if the City has not been notified of the delay by 4:00 p.m. on the scheduled day and the City has not approved the delay.
- 3) Failure to report legitimate complaints submitted by residents.
- 4) Failure to clean up scattered or spilled material after written or oral notice from the City as set forth in Section 21.04.

If the Contractor has violated or failed to follow several collection restrictions or requirements in a specific incident, the City may treat each violation or failure as a separate incident for the purpose of calculating penalties.

The City may deduct the full amount of any penalties from any payment due to the Contractor, but any penalties not so deducted shall remain the obligation of the Contractor and be payable to the City on demand. Failure to impose penalties for lack of performance shall not constitute a waiver of the City's other rights and/or remedies under either the Agreement or the City's existing ordinances or any subsequent failure of performance.

Section 25.00 Disputes and Remedies

25.01 Dispute Resolution Procedure

25.01.01 Notice of Disputes and Objections

If the Contractor disputes or objects to any direction, instruction, determination, or decision of the City, then the Contractor may notify the City in writing of its dispute or objection; provided, however, that the Contractor shall, nevertheless, proceed without delay to perform the work as directed, instructed, determined, or decided by the City, without regard to such dispute or objection. Unless the Contractor so notifies the City within three (3) business days after receipt of such direction, instruction, determination, or decision, the Contractor shall be deemed to have waived all such disputes or objections and all claims based thereon.

25.01.02 Resolution of Disputes and Objections

To avoid and settle without litigation, any such dispute or objection, the parties agree to engage in good faith negotiations. Within three (3) business days after the City's receipt of the Contractor's written notice of dispute or objection, a conference between the City and the Contractor shall be held to resolve the dispute. Within three (3) business days after the final conference, the City shall render its final decision, in writing, to the Contractor. If the Contractor objects to the final decision of the City, then it shall give the City notice thereof and, in such notice, shall state its final demand for settlement of the dispute.

25.02 Contractor's Remedies

If the City fails or refuses to satisfy a final demand made by the Contractor pursuant to Section 25.01.02 or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of the Contractor, within ten (10) business days following receipt of such demand, then the Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Agreement, as it may have in law or equity.

25.03 The City's Remedies

If it should appear at any time that the Contractor has failed, refused, or delayed to perform or satisfy any requirement of this Agreement and has failed to cure such failure within three (3) business days after written notice thereof from the City, which notice shall include specific requirements to cure, then the Contractor shall be liable to the City for penalties of \$200.00 per business day for each day until cured, through the tenth (10) business day after said notice. At the discretion of the City Director of Public Works, the cure and penalty period may be extended. If the Contractor has not cured after ten (10) business days, or an extension thereof, then the City shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

25.03.01 Strict Compliance Requirement

The City may require the Contractor to take any action necessary to bring Contractor into strict compliance with this Agreement.

25.03.02 Recover from Contractor

The City may perform or have performed all work necessary for the accomplishment of the results stated in Section 25.03.01 and withhold or recover from the Contractor and or make claim against the performance security all the cost and expense, including attorneys' fees and administrative costs incurred by the City in connection therewith.

25.03.03 Termination or Suspension of Agreement

The City may terminate or suspend this Agreement for cause.

25.03.04 Recovery of Damages

The City may recover any damages suffered by the City as the result of failure to cure by the Contractor.

25.04 Payment for Completed Work

In the event of any termination or suspension pursuant to Section 25.03.03, the Contractor shall have the right to be paid for all work done prior to the effective date of such termination or suspension and to be paid for all work done in accordance with the requirements of this Agreement.

Section 26.00 Payment

26.01 Contractor's Billings to City

The Contractor shall invoice the City for services rendered under this Agreement within ten (10) days following the end of the month.

26.02 Payments to Contractor

In the first year of the Agreement, the annual Agreement price is one hundred seventy-five thousand dollars (\$175,000). The City shall make a monthly payment to the Contractor, following receipt of an invoice in the sum of fourteen thousand five hundred eighty-three dollars and thirty-three cents (\$14,583.33) each month, less any penalties as provided in Section 24.00. However, the first five (5) payments of this Agreement shall be four thousand dollars (\$4000.00) less to satisfy the provision of Section 12.00.

In subsequent years of this Agreement, the City shall make a monthly payment to the Contractor in a sum

equal to one-twelfth of the Agreement price, as may be adjusted by Section 26.02.01, less any penalties.

26.02.01 Serviceable Units Modification

Adjustments in the amount of payment to be made to the Contractor shall be made during the Agreement to account for any increase of serviceable residential dwellings units due to annexation of eight (8) or more units in excess of eight thousand one hundred (8100). This adjustment is to be made according to a "per unit basis", which is calculated by dividing eight thousand one hundred (8100) into the first annual Agreement price of one hundred seventy-five thousand dollars (\$175,000). This amount equals twenty-one dollars and sixty cents (\$21.60) and shall be multiplied by the number, if any, of serviceable residential dwellings in excess of eight thousand one hundred, and then added to the then current Agreement amount to yield a new annual Agreement amount. Computation of the adjusted monthly payments shall be made by the City and provided to the Contractor thirty (30) days prior to the commencement of work to the newly added serviceable residential dwellings. Except that for any increase of serviceable residential dwelling units due to annexation of seven (7) or less units within 90 days, the computation shall be made quarterly by the City for the adjusted monthly payments thereafter. Adjusted monthly payments will be made within thirty (30) days of receipt of adjusted invoice.

26.02.02 Timeliness of Payment

All payments to Contractor will be made within thirty (30) days of receipt of invoice, or if late, shall bear interest at the rate of one and one-half (1-1/2%) percent per month on the unpaid balance, unless waived by Contractor.

26.03 Payments to City

The Contractor submitted a profit sharing schedule as a part of the Contractor's Proposal, which is made a part of this Agreement and is incorporated herein as "Exhibit A". In the event that during each year of the Agreement, more than seven hundred (700) tons of recyclable materials have been processed, the Contractor shall make payment to the City in accordance with "Exhibit A". Such payments shall be made within thirty (30) days following the sale and receipt of revenue by the Contractor. The Contractor shall submit

documentation indicating the sale price received from markets that support the amount of such payments.

Section 27.00 Notification

Any notifications, whenever required for any purpose under this Agreement, shall be made in writing and addressed to City at the Office of the Director of Public Works and to Contractor at Contractor's business address.

If to Contractor: Mr. Steve Smith, ABC Sanitary Hauling/Recycling, 401 W. Eureka, Champaign, Illinois., 61820.

If to the City: Mr. William R. Gray, Director of Public Works, City of Urbana, 706 South Glover Avenue, Urbana, Illinois, 61802.

Section 28.00 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.

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

City of Urbana, Illinois

Contractor
ABC Sanitary
Hauling/Recycling

Tod Satterthwaite
Mayor

Steve Smith
Owner/Operator

Date:

Date:

ATTEST:

Phyllis Clark, City Clerk