

**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 extended under the terms set forth above and which is contingent upon entry of a consent decree in the litigation resolving all issues in the litigation in favor of the City;

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

Section 1. That the Mayor is hereby authorized to sign and otherwise execute the Agreement to extend the contract; and

Section 2. The City Attorney is hereby authorized to settle the litigation by execution and filing of the consent decree resolving all issues in the litigation in the City's favor.

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

PASSED by the City Council this 3rd day of December, 2001.

AYES: Chynoweth, Hayes, Huth, Otto, Patt, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this 13th day of December, 2001.

Phillip D. Clark
Phillip D. Clark, City Clerk
Robert J. Robert
Deputy Clerk
Tod Satterthwaite
Tod Satterthwaite, Mayor

**AN AGREEMENT EXTENDING THE TERM OF
AN AGREEMENT TO PROVIDE RESIDENTIAL CURBSIDE RECYCLING
COLLECTION AND PROCESSING SERVICES**

In consideration of the mutual covenants and conditions and the respective obligations created by this agreement, the City of Urbana, Illinois, a municipal corporation (hereinafter called "City") and Stephen A. Smith, d.b.a. ABC Sanitary Hauling/Recycling (hereinafter called "Contractor") agree as follows:

1. Recitals

The City and the Contractor previously entered into a contract signed on February 10, 1997, and currently in effect, entitled AN AGREEMENT TO PROVIDE RESIDENTIAL CURBSIDE RECYCLING COLLECTION AND PROCESSING SERVICES (hereinafter called "the Contract"), *a copy of which is attached to this Agreement.*

The Contract, as originally executed, is to remain in effect through March 31, 2002.

The City filed an action against the Contractor for declaratory judgment in Champaign County Circuit Court, Sixth Judicial Circuit, case # 99-L-39; the Contractor responded with a Counterclaim for Injunction; and the City raised Affirmative Defenses to the Counterclaim. (All of which, collectively and together with every other issue related to them, whether listed here or not, are referred to hereinafter as the "litigation.")

The City and the Contractor desire to resolve the litigation by settlement via a consent decree, *a copy of which is attached to this agreement*, to be entered by the court.

The City and the Contractor also desire, as part of the settlement, to amend the Contract to extend its life an additional two years beyond its original term, so that it remains in effect through March 31, 2004; to amend the Contract to eliminate the requirement of profit-sharing; and to amend the Contract to expand the types of plastics that are required to be collected, processed, and marketed.

2. Agreement Contingent upon Entry of the Consent Decree by the Court

This agreement to amend the Contract is contingent upon full and final resolution of the litigation via the entry of the Consent Decree by the court in 99-L-39. If the Consent Decree is for any reason not entered by the court, this agreement to extend the term of the Contract and eliminate the requirement of profit-sharing has no effect, and the Contract shall continue in force only according to its original provisions. The City and the Contractor agree to take all lawful actions that are necessary or convenient to facilitate the prompt entry of the Consent Decree by the court.

3. Amended Sections of the Contract

The Contract is amended in the following particulars:

- A. Section 1 ("Term") of the Contract is amended to extend the term of the Contract by two years, so that it reads as follows:

"This Agreement shall commence March 4, 1997 and shall remain in full force and effect through March 31, 2004, unless sooner terminated as provided herein."

- B. Paragraph 22.03 ("Recyclable Materials to be Collected") is amended to expand the kinds of plastics to be collected, processed, and marketed, so that it reads as follows:

"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; HDPE, [SPI code #2] - High-density polyethylene containers, natural and pigmented; Polyvinyl Chloride (V) [SPI code # 3]; Low density polyethylene (LDPE) [SPI code #4], Polypropylene (PP) [SPI code #5]; Polystyrene (PS) [SPI code #6]; and Other/commingled plastics (OTHER) [SPI code #7]; all including but not limited to "narrow necked" bottles and containers; and LDPE six and twelve pack ring carriers.

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

- C. Paragraph 26.03 ("Payments to City") of the Contract is amended to add a sentence that cuts off the profit-sharing requirement as of January 1, 1998, rather than continuing through the life of the Contract, as follows:

"26.03 Payments to the 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. The requirement of making payments to the City pursuant to this paragraph shall cease as of January 1, 1998."

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

City of Urbana, Illinois:

Tod Satterthwaite
Tod Satterthwaite

Contractor:

Stephen A. Smith
Stephen A. Smith
d.b.a. ABC Sanitary Hauling/ Recycling

Date: 1/14/02

Date: 11-26-2001

ATTEST:

Phyllis D. Clark
Phyllis D. Clark, City Clerk
by Robert J. Robert
Deputy Clerk