

**AN ORDINANCE APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT TO PROVIDE RESIDENTIAL RECYCLING COLLECTION AND PROCESSING SERVICES**

(ABC Sanitary Hauling)

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

Section 1. That an Agreement to Provide Residential Recycling Collection and Processing Services by and between the City of Urbana, Illinois and ABC Sanitary Hauling, in the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this 1st day of March, 2004.

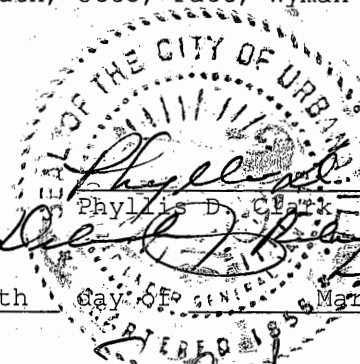
AYES: Chynoweth, Hayes, Huth, Otto, Patt, Wyman

NAYS:

ABSTAINS:

APPROVED by the Mayor this 12th day of March,

2004.



*Phyllis D. Clark*  
Phyllis D. Clark - City Clerk  
by *[Signature]* Deputy Clerk  
*Tod Satterthwaite*  
Tod Satterthwaite, Mayor

## AN AGREEMENT TO PROVIDE RESIDENTIAL 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 Steven A. Smith, d.b.a. ABC Sanitary Hauling (hereinafter called "Contractor") agree as follows:

### **1.00 TERM**

This Agreement shall commence April 1, 2004 and shall remain in full force and effect through March 31, 2009, unless sooner terminated as provided herein. This Agreement may be extended by the Contractor and the City for an additional two (2) years, until March 31, 2011. The City's approval may be granted via administrative action by the Chief Administrative Officer without the necessity for further Council action.

### **2.00 DEFINITIONS**

The following words and phrases, when used in these contract documents, shall have the meaning given to them in this section:

Agreement: means this Agreement.

Approved Recycling Containers: means a container, bin, or wheeled cart to temporarily contain recyclable materials awaiting weekly collection, 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.

Condominium: means a building containing individual dwelling units that adjoin one another by a common line (zero lot line) of ownership, with each dwelling being eligible for separate ownership.

Contract Documents: means the City's Request for Proposals [RFP], the Contractor's Proposal (to the extent that it is consistent with other contract documents and the RFP), this Agreement, the Performance Security, and any subsequent written addenda or changes to the foregoing documents made and approved by the City.

Contractor: means Steven A. Smith, d.b.a. ABC Sanitary Hauling, a sole proprietorship.

Curbside: means that portion of right-of-way adjacent to and within ten (10) feet of paved or traveled City roadways.

Curbside Collection: means the collection of recyclables placed curbside.

Dwelling: means any building or mobile home, 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.

Mobile Home: means a movable unit, designed and constructed to be towed on its own chassis, and

designed to be connected to utilities for year-round human occupancy providing complete independent living facilities.

*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 commodities that are accepted in this program consisting of empty containers that held food and beverages, health or beauty products, household cleaners, (but not paint, motor or lubricating oil, pesticides, herbicides, or insecticides, or toxic chemicals not used in normal household activities) in the following material commodity types: clear, brown, and green glass (MGL); steel (TIN) and aerosol cans, bi-metal; and aluminum cans, foil, and trays (ALUM); polyethylene terephthalate (PET) [SPI code #1] containers; high-density polyethylene (HDPE) [SPI code #2] containers; (SPI code #3 through #7) plastic narrow-necked (blow molded) containers; (LDPE) [SPI code #4] 6 and 12 pack plastic ring carriers; (ASE/CAR) aseptic juice boxes and "gable topped" cartons, such as dairy and juice; and fiber commodities including: newspaper, telephone directories; paperback books (ONP); corrugated cardboard (OCC); chipboard and beverage carrier stock; magazines (OMG); residential mixed paper (RMP).

*Residential Dwelling*: means any single family dwelling, condominium or building containing four (4) or fewer dwelling units within the corporate limits of the City.

*Waste*: means garbage, refuse, rubbish and other solid or semisolid materials that are discarded by a generator for disposal in a landfill.

### **3.00 GENERAL OPERATIONAL SPECIFICATIONS AND STANDARDS**

#### **3.1 Intent**

The recycling program described herein is one of the most visible and has the highest degree of public interaction of any City program. Therefore, it is the intent of these specifications to seek and maintain, throughout the term of the Agreement clean, courteous, well-scheduled, and well-executed collection and processing of recyclables from residential dwellings in the City.

#### **3.2 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.

#### **3.3 Damage to Property**

Contractor shall promptly, and without charge to the City or to the affected property owner, repair or restore, at its own expense and to a condition equal to that existing before the occurrence and satisfactory to the City, any damage negligently, recklessly, or willfully done by the Contractor to any property, public or private, as a result of the work. If Contractor fails to promptly repair or restore any such damage, then the City may in its sole discretion, but is not required to, after 48 hours written notice to Contractor, itself cause such repair or restoration to be made, with its own forces or with forces hired for that purpose, and charge all costs related thereto to Contractor. If the City determines, in its sole discretion, that such damage has created a dangerous situation requiring immediate response, then the City may cause such repair or restoration to be made without notice

to Contractor and charge all costs related thereto to Contractor.

Notwithstanding any other provision of the Agreement, Contractor's obligations under this section shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of the City or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this section.

### 3.4 Office and Supervision

The Contractor shall at all times, employ adequate personnel to manage and supervise the program as herein described. In addition, the Contractor shall maintain a local office within the Urbana-Champaign area and communications capabilities, including telephone, Fax and Email service through which the Contractor can be contacted Monday through Friday, 8:00 am. through 5:00 pm., except Holidays. The telephone number shall be publicly listed in the Champaign – Urbana telephone directory.

### 3.5 Employees and Conduct

The Contractor shall undertake to perform all collection services rendered hereunder in a professional, 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 crewmembers 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.

### 3.6 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. No subcontractors shall be used for collection or processing by the Contractor unless the subcontractors are 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 Contract, and every reference in the Agreement to "Contractor" shall be deemed also to refer to all subcontractors of Contractor. Nothing contained in this Agreement shall create any contractual relationship between a subcontractor and the City.

### 3.7 Risk of Loss

The work and everything pertaining thereto 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.

### 3.8 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, regulations and building codes 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 as soon as possible but no later than one (1) working day. 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.

### 3.9 Inspections

The City or its authorized agent 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, program related records, equipment or work. The City may conduct inspections at reasonable hours. Inspections are not required to be announced by the City or its authorized agent.

### 3.10 Reports and Records

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

The Contractor shall furnish, on forms approved by the City, monthly reports on the services performed within ten (10) days of the end of every month, for the term of the contract, 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 (this will be accomplished by the Contractor performing a sort and weigh task, representative of typical loads, each month with a city staff member present. This task may be adjusted to a quarterly basis as approved by the City);
- (c) accurate daily weight receipts of materials collected;
- (d) the markets and revenue obtained from sale of commodities;
- (e) certification of the monthly quantity of materials processed and of materials alternatively disposed of;
- (f) information on the quality of service being provided (e.g. complaints of missed collections, timeliness and problems as reported by residents to the Contractor).

### 3.11 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 (e.g. type of material collected, method of handling, method of collection, stops served, processing, etc.). If either party requests a change, it must be written and shall be responded to in a timely manner and all parties are required to negotiate in good faith to effectuate any changes.

### 3.12 Insurance

During the entire period of this Agreement, the Contractor shall obtain and maintain at its own expense all insurance required under this paragraph. The Contractor shall not allow any subcontractor to commence work on a subcontract for the work until such insurance required of the subcontractor has been so obtained and approved, and a certificate from the insurance companies

shall be filed with the City. At a minimum, the Contractor shall maintain during the performance of this Agreement the following types of insurance:

**3.12.1 Statutory Liability Insurance**

Workers' Compensation and Occupational Diseases, with statutory limits as prescribed by the State of Illinois and Employer's Liability Insurance, with a limit of not less than \$500,000.00 for all damage or bodily injury from one or more claims arising from each accident or occupational disease.

**3.12.2 Comprehensive Liability Insurance**

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

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

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

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

Destruction or damage to personal or real property including but not limited to destruction or damage to the property of the Contractor, subcontractor and non-parties to this Agreement.

**(2) Contractor's Protective Liability**

Liability for acts or omissions of any subcontractors the Contractor may employ.

**(3) Limits of Coverage**

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

Bodily injury, including death resulting therefrom, and property damage - \$1,000,000 each occurrence/ \$2,000,000 aggregate.

Automotive Liability: Bodily injury, and death resulting therefrom, and property damage - \$1,000,000 each occurrence. This insurance must include non-owned, hired, leased, or rented vehicles, as well as owned vehicles.

**3.12.3 Proof of Insurance**

Before execution of the Agreement, the Contractor shall submit a certificate of insurance that is satisfactory to the City indicating the required coverages are in effect. The Contractor shall similarly submit each subcontractor's policies of similar insurance before

each commences work. Such insurance will be carried with financially responsible insurance companies, licensed in the State of Illinois and shall be kept in full force. Contracts of insurance shall be for the duration of the Agreement.

#### 3.12.4 City as Additional Insured

All policies of insurance required hereunder shall contain an endorsement showing the City of Urbana and its officers and employees as additional insured under said policies, as their interests and liability may appear or exist. The City shall be named as a certificate holder. The City shall receive not less than thirty (30) days prior written notice to the effective date of any cancellation or reduction in coverage.

#### 3.13 Compliance with Applicable Laws, Ordinances, and Regulations

The Contractor shall comply with all applicable Federal, State and Municipal laws, ordinances, rules, and regulations during the term of this Agreement.

#### 3.14 Taxes, Licenses, Permits, and Certificates

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.

#### 3.15 Performance Security

The Contractor shall furnish to the City adequate security for the faithful performance of the Agreement in the amount of twenty thousand dollars (\$20,000). The security shall indemnify the City for the life of the Agreement against any loss resulting from failure of performance by the Contractor including the payment of wages and costs of supplies, materials, and insurance premiums. Adequate security shall include an irrevocable letter of credit issued by a financial institution acceptable to the City in the amount of twenty thousand dollars (\$20,000).

#### 3.16 Indemnity

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.

To the fullest extent of the law, the Contractor shall indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including Workers Compensation claims, and including the cost of defending same including costs and attorney's fees, of or by anyone whomsoever in anyway resulting from or arising out of the operations of the

Contractor or the Contractor's employees or subcontractor and acts or omissions of employees or agents of the Contractor or subcontractors, unless caused solely by the City, its officers or employees.

The performance security or insurance coverage specified herein shall in no way lessen or limit the liability of the Contractor under the terms of this Agreement. The Contractor shall procure and maintain at the Contractor's own cost, any additional kinds of insurance that, in the Contractor's own judgment, may be necessary for the Contractor's proper protection in the prosecution of the work.

### 3.17 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 be, or 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, or 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.

### 3.18 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, such consent shall not be withheld without just cause. In the event of any assignment, the assignee shall assume the liability of the Contractor.

### 3.19 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 the case of a force majeure 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.

**3.20 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, officer, agent, employee, or attorney of the City, in his or her individual capacity, and neither the members of the City Council nor any official, officer, agent, employee, or attorney 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, performance, non-performance, breach, or default of this Agreement.

**4.00 COLLECTION AND PROCESSING SPECIFICATIONS AND STANDARDS**

**4.1 General**

The Contractor shall collect all properly prepared recyclables as set forth in this Section, from each residential dwelling and building participating in the program within the City and safely transport the same to a processing facility, and shall process the recyclables in accordance with this Agreement, during the term of the Agreement.

**4.2 Recycling Service Performed at No Extra Cost**

The Contractor shall not impose or assess any separate fees, costs or stickers upon any dwelling or apartment building for recycling services specified in this Agreement.

**4.3 Units to be Serviced**

The number of units stated below is a good faith approximation of the total number of occupied, and therefore potentially serviceable residential dwellings as of August 2003. The Contractor will be expected to canvass all streets with residential dwellings in the city limits throughout the duration of the Agreement and provide collection service to all, existing or newly constructed, participating dwellings.

Residential Dwellings

Type of Unit	Number
Single Family	6650
Duplex	850
Triplex	137
Fourplex	193
<b>Total</b>	<b>7830</b>

**4.4 Hours of Operation**

Collection of recyclables shall not start before 7:30 a.m. nor continue after 7:30 p.m. Exceptions to collection hours shall be effected only upon the mutual agreement of the City and the Contractor, 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.

#### 4.5 Holidays

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

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

When the Contractor observes a holiday, service will still be provided to all dwellings and buildings for that week. Collection will occur one day later than normal (i.e. if a holiday falls on Thursday, Thursday's route would be collected Friday, Friday's route would be collected Saturday, etc.). It is recognized that unforeseen emergencies may occur and would 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.

#### 4.6 Recyclable Materials to be Collected, Collection Method

The Contractor shall collect the recyclable materials listed below from each participating residential dwelling unit without respect to quantity. The Contractor shall collect materials commingled in a single stream. Other collection methods must be approved by the City prior to implementation by the Contractor.

##### Paper fibers:

1. ONP - Newspaper and inserts, telephone directories, paperback books
2. OCC - Corrugated cardboard, fiberboard, chipboard and beverage carrier stock
3. OMG - Magazines, catalogs
4. RMP - Residential mixed paper (mail, computer paper, ledger, etc.)

##### Containers:

1. TIN/BIM - Food & beverage cans, and empty aerosol cans (steel, bi-metal)
2. ALUM - Food & beverage cans, foil, and trays
3. MGL - Food & beverage mixed glass containers (flint, brown and green)
4. PET, #1 - Polyethylene terephthalate containers, natural and pigmented
5. HDPE, #2 - High-density polyethylene containers, natural and pigmented
6. #3 through #7 plastic narrow-necked (blow molded) bottles, and 6/12 pack plastic ring carriers
7. ASE/CAR Aseptic juice boxes and "gable topped" cartons, such as dairy and juice

Containers that have held paint, motor or lubricating oils, pesticides, herbicides, or insecticides, or toxic chemicals not used in normal household activities are not acceptable and will not be collected.

#### 4.7 Changes in Recyclable Materials

It is the desire of the City to expand the types of materials that can be recycled, depending upon the availability of reasonable markets, commodity demand or processing capability. If, during the term of the Agreement, any opportunities arise to meet this desire is requested by the City or the

Contractor, due and reasonable consideration will be given. Any changes will be negotiated by the City and the Contractor pursuant to Section 3.11.

#### 4.8 Collection Zones, Days

The City shall, as determined by the Public Works Department, be divided into five (5) collection zones, one zone for each day of the week except Saturdays and Sundays, as described in Exhibit A attached to this Agreement.

These zones will be developed so as to contain an approximately equal amount of potential stops, 1600 in each. The boundaries of such zones may be modified by the City during the term of the Agreement. The Contractor will be expected to complete collection within the hours of operation for all residential dwellings within the collection zones/days. Any setouts that might be missed in a collection zone shall be collected within twenty-four (24) hours of receiving notice by the City.

#### 4.9 Frequency of Collection

The Contractor shall provide once a week collection in each of the five collection zones, Monday through Friday, and as provided for in Section 4.5, each week during the term of the Agreement.

#### 4.10 Location

The Contractor shall collect recyclables from all residential dwelling customers who place recyclables at curbside (or at their front or back door as provide in Section 4.11) before 7:30 a.m. on the day of collection during the term of this Agreement.

#### 4.11 Disabled Customers

The Contractor shall provide front or backdoor collection service to any customer who, by reason of age, physical or mental limitation, is disabled and unable to place containers or recyclables curbside. The City is currently aware of approximately 64 such customers in the residential program. Residents will be required to provide an acceptable means of verification of such disability if requested by the City. Any appeals will be determined by the City.

#### 4.12 Cleanliness and Service Conduct

The Contractor shall exert all reasonable precautions to prevent spilling or scattering of recyclable materials while performing this Agreement. The Contractor shall leave each collection stop clean and shall leave only unacceptable materials and/or recycling containers behind regardless of whether on public or private property. Any vehicle fluid leaks shall be promptly repaired. In no case, shall the Contractor throw or otherwise place approved containers back onto properties in such a manner as to create a hazard – such as in the street, sidewalk, or blocking driveways in a manner that access cannot be made, damage to property or vegetation, damage to recycling containers, or customer inconvenience after being collected. Every effort shall be expected and made to place containers onto the parkway in a neat and orderly manner. The Contractor shall make collections with a minimum of noise and disturbance.

#### 4.13 Recycling Containers

The City shall be responsible for acquiring and distributing all containers used in the program. The following types of containers are acceptable: 15 gallon recycling bins currently used, 5 gallon buckets previously used, and 65 gallon wheeled carts. In addition, the Contractor shall collect acceptable materials from containers that may have not been distributed by the City but clearly contain acceptable recyclable materials, as well as acceptable recyclable materials that can not

reasonably fit into containers due to size consideration.

The City will be introducing a 65 gallon wheeled cart for residential use under this Agreement. The 65 gallon carts will be offered as an option on a subscription basis. The Contractor shall provide the necessary equipment, such as a cart dumper, to satisfactorily empty the carts.

#### 4.14 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 the Agreement, City ordinances, or the Processor's requirements. The City shall standardize preparation requirements, in the event of conflicting requirements that may result from the use of multiple processor(s). 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 5.2.1. Initial Field Response.

#### 4.15 Title to Recyclables

In so far as the City may assign, once properly placed out for collection, all title and ownership to all recyclable materials shall vest with the Contractor. The Contractor shall retain any and all revenues from commodity sales.

#### 4.16 Collection Equipment

The Contractor shall furnish all items necessary including equipment and labor for the collection service contemplated by this Agreement and shall at all times provide a sufficient amount of equipment and labor to maintain a completely adequate service. All vehicles used under this Agreement will be required to meet conditions set forth in this section. Recyclables collected by the Contractor shall be loaded, contained, and hauled in vehicles dedicated for the collection of recyclables only. No vehicles that normally haul wastes shall be used, unless due to unforeseen equipment failure, in which event the Contractor shall promptly repair or replace the failed equipment. If such equipment failure should be anticipated to last more than 3 days, the Contractor shall notify the City of use of other non-dedicated vehicles. If compaction vehicles are used in collection, the compaction pressure employed shall not be of such density to render recyclable materials unacceptable for receipt by processors. The Contractor's explicit goal is to maximize the quantity and quality of all materials collected for resale. All equipment shall be maintained in good working order, and operated in compliance with all local and state statutes, ordinances and regulations, and to assure the safety of the collection personnel, citizens and property.

In order to project a clean and professional image of the program, prior to the start of this Agreement, the exterior body all collection vehicles shall be inspected and adequate repairs made to rusted or dented areas and the entire body will be required to have received a new coat of white paint. Optional green accents, such as striping or the generic recycling mobius loop logo or other accent, upon city approval, are acceptable. Additionally, vehicles shall be labeled with the Contractor's name, address, and telephone number at least six (6) inches high, for identification purposes. No commercial advertising, except the Contractor's logo, shall be displayed on said vehicles. The City's recycling program logo shall also be displayed to the satisfaction of the City.

#### 4.17 Promotion and Use of "U-CYCLE" Name and Logo

The U-CYCLE program is well established within the City. Any and all educational and promotional activities shall be conducted under supervision of the City and the name and logo of

**"U-CYCLE, Urbana's Recycling Program."** The City shall, at its expense, and in its sole discretion, provide promotion and educational efforts. The Contractor agrees and acknowledges that an effective program requires community education and promotion, and therefore, the Contractor agrees to fully cooperate and assist the City in such promotional and educational efforts as deemed necessary by the City, such as distribution of informational fliers by collection crews. The "U-CYCLE" name and logo are the sole and exclusive property of the City. Except as provided in this Section and Section 4.16 or as otherwise expressly agreed in writing by the City, the Contractor may make no use of the "U-CYCLE" name or logo.

#### **4.18 Processing of Recyclables**

The Contractor shall deliver all recyclable materials collected to a processing facility, product broker, or other end user as approved by the City. It shall be the responsibility of the Contractor to meet the provisions of this Section, which include the processing facility, equipment, labor and management to perform the sorting, preparation, processing and recovery of materials in a manner that will maximize the quantity and quality of recyclable material commodities to be returned to the economic mainstream as a raw material for new, reused or reconstituted products. 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.

##### **4.18.1 Primary Goal**

The primary goal of the Contractor on a monthly basis, is to recover ninety (90%) percent of the gross weight of recyclable material commodities collected. While the Contractor shall make every reasonable effort to collect and deliver acceptable materials in a condition that will maximize the quantities to be processed, small quantities may be delivered in a condition making them unsuitable for processing or unable to meet market specifications. These materials and unacceptable materials will not be required to be sold or delivered for use in secondary production inputs and may be alternatively disposed of in an approved manner or facility. However, if the monthly recovery rate falls below 90% then the Contractor shall submit a written explanation of the cause and recommendations to maintain residuals above this percentage. The Contractor shall record and provide a monthly certification to the City of quantities processed and of all materials alternatively disposed as a part of reporting requirements.

##### **4.18.2 Failure to Meet Primary Goal**

If the Contractor fails to meet the primary goal on a monthly basis, for two (2) consecutive months, the Contractor will be required to meet with the City to discuss the Contractor's failure to meet the primary goal. Such discussions shall commence as soon as possible after written request from the City or the Contractor to meet, and shall be responded to in a timely manner and both parties are required to negotiate in good faith to effectuate any changes, and to implement commercially reasonable changes. If the City determines that the Contractor's failure to meet the primary goal is at least in part the result of conditions within the control of the Contractor and if the Contractor refuses or fails to correct those conditions, the City may pursue its remedies under Section 6.3 of this Agreement.

However, in no case shall the recovery rate be allowed to fall to eighty (80%) percent for any given month. If the Contractor envisions this situation would occur it shall be incumbent upon the Contractor to make alternative arrangements to prevent this situation.

If the recovery rate would fall below 80% the City shall have the right to terminate this Agreement upon written notice of sixty (60) days.

## **5.00 CUSTOMER RELATIONS**

### **5.1 General Complaints**

Contractor shall operate and provide services in such a manner so as to minimize complaints from customers.

### **5.2 Processing of Complaints**

#### **5.2.1 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 manner or placing of containers, collection, or the like, the Contractor agrees that in the first specific occurrence, courteous collection will be immediately made, but only of acceptable materials, even though, in its opinion, it is improperly placed or contained. 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 unacceptable 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 by FAX (217-384-2400) to the City by the next workday of initial customer posting, and the third copy shall be retained by the Contractor.

#### **5.2.2 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, that same day if possible, but in any case, within one (1) working day after receipt of such complaint; and if such a complaint is about a missed scheduled collection, then Contractor shall immediately investigate and, if a scheduled collection was not made in accordance with the terms of this Agreement, then Contractor shall cause such collection to be made within one (1) working day, or sooner, after receipt of such complaint

### **5.3 Referral to City**

If Contractor is unable to resolve a complaint in a manner satisfactory to both Contractor and the customer, then Contractor, within two (2) working 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, and the City's decision concerning each such complaint shall be final and binding on Contractor. All complaints shall be reported to the City, pursuant to reporting requirements of Section 3.10 and 5.2.1.

### **5.4 Performance Penalties**

Performance Penalties are established and mutually agreed upon and shall be levied against the Contractor to promote the delivery of professional services and assure services are provided pursuant to the Agreement. Upon determination by the City that a performance violation has

occurred penalties shall be assessed against the Contractor as follows:

**Class I Penalties - \$25 per incident in any given month**

- 1) Section 4.8 - Failure to empty and collect ten (10) or less setouts in a collection zone;
- 2) Section 4.8 - Failure to empty and collect setouts in a collection zone within twenty-four (24) hours of receiving notice by the City;
- 3) Section 4.12 - Throwing or leaving containers in a manner creating a hazard or inconvenience to customers;
- 4) Section 4.12 - Failure to clean up scattered or spilled material.

**Class II Penalties - \$250 per incident in any given month**

- 1) Section 3.5, Inappropriate employee conduct;
- 2) Section 4.4, Failure to comply with hours of operation;
- 3) Section 4.8, Failure to complete a collection zone on its designated day;
- 4) Section 5.2, Failure to adequately address legitimate complaints.

For a Class II penalty of Section 4.8 to occur, an incident is defined as not collecting more than 10 setouts throughout any given collection zone.

A penalty may be levied for each specific location or “incident” where a violation is reported or observed. If the Contractor has violated or failed to follow specifications in a specific incident, the City may treat each violation or failure as a separate incident for the purpose of calculating contract penalties.

Failure to comply with other Agreement specifications shall be determined by the City. The assessment of performance penalties shall be at the reasonable discretion of the City. The City may deduct the full amount of any contract penalties from any payment due to the Contractor, but any performance penalties not so deducted shall remain the obligation of the Contractor and be payable to the City on demand. Failure to impose performance penalties shall not constitute a waiver of the City's other rights and/or remedies under either the Agreement or the City's ordinances or any subsequent failure of performance. Nothing contained in this Section 5.4 shall be construed as preventing the City from pursuing any of its remedies under the law or Sections 6.1 and 6.3 of this Agreement for performance violations, either in lieu of or in addition to the procedures and remedies established by law and by Sections 6.1 and 6.3.

**6.00 DISPUTES AND REMEDIES**

**6.1 Dispute Resolution Procedure**

**6.1.1 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 two (2) 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.

**6.1.2 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 chaired by the City's Human Relations Officer 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.

**6.2 Contractor's Remedies**

If the City fails or refuses to satisfy a final demand made by the Contractor pursuant to Section 6.1.2 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.

**6.3 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 two hundred fifty (\$250) per business day for each day until cured, through the tenth business day after said notice. At the discretion of the City, the cure and penalty period may be extended. If the Contractor has not performed the cure 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:

**6.3.1 Strict Compliance Requirement**

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

**6.3.2 Recovery from Contractor**

The City may perform or have performed all work necessary for the accomplishment of the results stated in Section 6.3.1 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.

**6.3.3 Termination or Suspension of Agreement**

The City may terminate or suspend this Agreement for cause.

**6.3.4 Recovery of Damages**

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



### 6.3.5 Other Remedies

The City may pursue such other remedies as are otherwise available to it, whether in law or equity, either in lieu of or in addition to the remedies otherwise set forth in this Agreement.

### 6.4 Payment for Completed Work

In the event of any termination or suspension pursuant to Section 6.3.3, 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.

### 6.5 No Waiver

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

## 7.00 COMPENSATION AND NOTIFICATION

### 7.1 Basis and Method of Payment and Compensation

#### 7.1.1 Payment Responsibility and Amount

The City shall be responsible for payment to the Contractor and payment will be made within thirty (30) days of an approved invoice. The payment amount shall be one dollar and ninety cents (\$1.90) per month per serviceable residential dwelling, in accordance with this Section.

#### 7.1.2 Contractor's Billings to City

The Contractor shall invoice the City for collection services based upon a monthly reconciliation prepared by the City and requires invoicing within ten (10) days following the end of the month.

#### 7.1.3 Monthly Reconciliation, Payment Basis

The City shall determine the number of serviceable residential dwellings that are eligible to receive service as of April 1, 2004. The City shall keep a record of residential dwellings that may be demolished, annexed, or constructed and occupied for each month and subtract or add the number of such serviceable dwellings to the total established at April 1, 2004. The Contractor shall receive payment based upon this reconciled number of dwellings in the amount of one dollar and ninety cents (\$1.90) for each serviceable residential dwelling, less any penalties that may be imposed. This reconciliation shall be performed and forwarded monthly to the Contractor.

#### 7.1.4 Revenue from Material Resale

Any and all revenue received by the Contractor from the sale of recyclable material commodities shall remain with the Contractor.

7.2 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 Chief Administrative Officer and to Contractor at Contractor's business address.

If to Contractor:

Mr. Steve Smith, Owner  
ABC Sanitary Hauling  
401 W. Eureka St.  
Champaign, Illinois 61820

If to the City:

Chief Administrative Officer  
400 S. Vine St.  
Urbana, Illinois 61801

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,  
Mayor

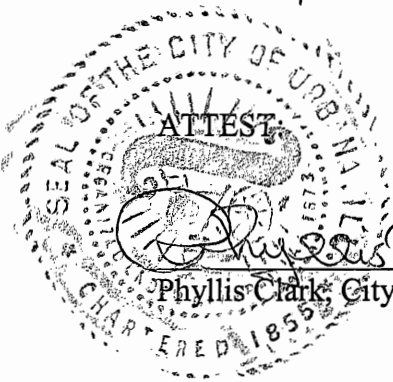
Date: 3/10/04

Contractor:

Steven A. Smith

Steven A. Smith, Owner  
ABC Sanitary Hauling

Date: 2-18-04



Phyllis D. Clark  
Phyllis Clark, City Clerk

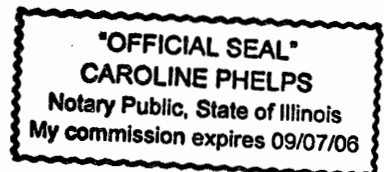
SUBSCRIBED before me,  
a Notary Public, by Steven A. Smith  
this 18th day of Feb, 2004.

City of Urbana  
County of Champaign  
State of Illinois

Caroline Phelps

Notary Public

SEAL:



2004-02-070

**EXTENSION OF AGREEMENT TO PROVIDE RESIDENTIAL RECYCLING  
COLLECTION AND PROCESSING SERVICES**

WHEREAS, the City of Urbana, an Illinois municipal corporation (hereinafter "City") and ABC Sanitary Hauling (hereinafter "Contractor"), have previously entered into an Agreement in March 2004 providing for the Contractor to perform certain services for residential recycling collection and processing services, and such Agreement ends March 31, 2009; and

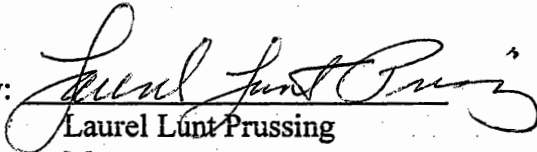
WHEREAS, under the provisions of that Agreement, the parties may extend the term for an additional two (2) years until March 31, 2011; and


WHEREAS, the parties have come to agreement to extend the existing Agreement and all terms thereof.

NOW THEREFORE, for and in consideration of the mutual promises contained in the aforesaid Agreement, the parties agree to extend all terms and conditions therein, until March 31, 2011.

City of Urbana, Illinois

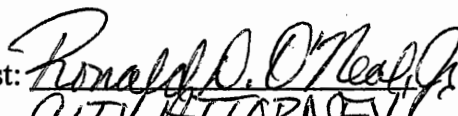
ABC Sanitary Hauling

By:   
Laurel Lunt Prussing  
Mayor

By:   
Steven A. Smith

Date: 12/9/08

Date: 12-3-2008

Attest:   
CITY ATTORNEY

**FILED**  
DEC 10 2008  
Phyllis D. Clark  
City Clerk