

**RESOLUTION NUMBER 5921**

**WHEREAS**, the City of Beatrice, Nebraska has a contract with Sanitary Garbage Co., Inc., a Nebraska Corporation, (“Contractor”) wherein Contractor operates a non-exclusive recycling program in Beatrice, Nebraska; and

**WHEREAS**, said contract terminated on March 31, 2016, and the Mayor and City Council desire to renew this contract for a five-year period.

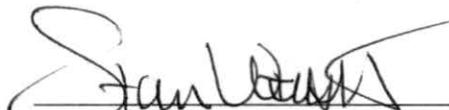
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

**SECTION 1.** That the Mayor and City Clerk are hereby authorized to execute the Agreement between the City of Beatrice, Nebraska and Sanitary Garbage Co., Inc., a Nebraska Corporation. Said Agreement shall be for a term of five (5) years beginning April 1, 2016 and ending March 31, 2021 with an option to renew for another five (5) year term. A copy of said Agreement, marked as Exhibit “A” is attached hereto and incorporated by reference.

**SECTION 2.** That rates contained within said Agreement shall be implemented and take effect upon the date of execution of the Agreement by both parties thereto.

**SECTION 3.** That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 6<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Stan Wirth, Mayor

Attest:

  
\_\_\_\_\_  
Erin Saathoff, City Clerk

### **AGREEMENT - RECYLCING**

THIS AGREEMENT is made effective the 6<sup>th</sup> day of June, 2016, by and between the Beatrice Area Solid Waste Agency, a joint entity, hereinafter called "BASWA" and Sanitary Garbage Co., Inc., a Nebraska corporation, hereinafter called "Contractor."

**WHEREAS**, it is in the best interests of the Beatrice Area Solid Waste Agency, a joint entity, ("BASWA"), to extend the useable life of its solid waste disposal facility by diverting materials from disposal at its solid waste disposal facility through a recycling program;

**WHEREAS**, BASWA has entered into an agreement with the City whereby City manages the Agency's solid waste disposal facility and recycling program on behalf of BASWA; and

**WHEREAS**, BASWA desires to grant to Contractor the non-exclusive right to operate BASWA's recycling program to help to accomplish this goal.

WITNESSETH:

1. The term of this Agreement shall be for a period of five (5) years commencing on the 1<sup>st</sup> day of April, 2016 and ending on the 31<sup>st</sup> day of March, 2021. The parties hereto may extend this agreement for an additional five (5) year term upon terms and conditions mutually agreeable to both parties at least one hundred and twenty (120) days prior to the termination of this agreement. In consideration of the covenants and agreements to be performed by Contractor, and under the conditions and provisions hereinafter contained and set forth, BASWA does give, grant, and confer upon Contractor the non-exclusive right and privilege of operating a program for the collection of recyclables and promotion of such a program.

2. It is agreed that the Contractor shall provide, and shall operate and maintain, a place of business for the deposit of recyclables, as defined herein, located within the city limits of the City of Beatrice ("recycling center"). Contractor shall furnish all labor and shall pay all costs necessary for the proper operation and maintenance of such recycling center. Contractor shall provide at its cost a building at such recycling center site to be used as a drive-thru facility for the collection of recyclables. Such building shall be of adequate size to operate as a drive-thru facility and to store all recyclables deposited at the recycling center. The entire area of the recycling center site shall be enclosed by a fence of at least six feet in height; and all approaches and the area of the recycling center where recyclables will be deposited shall be hard-surfaced with concrete or asphalt. An employee of Contractor shall be available at the recycling center to assist with the unloading and sorting of recyclable materials during all hours in which the recycling center is open. After establishing such recycling center, Contractor shall not change the location for the recycling center unless approval is given by the City Council of City as Manager for BASWA or the Board of Directors of BASWA. Contractor agrees that such recycling center shall be open for any person to deposit without any charge recyclables

generated within the solid waste jurisdiction area of the governmental bodies with who BASWA has service contracts ("BASWA territory") during the hours of 12:00 p.m. to 6:00 p.m. on Monday through Friday, inclusive, and during the hours of 8:00 a.m. to 6:00 p.m. on Saturdays, except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. BASWA may require that the recycling center be open for additional hours other than the hours specified in this paragraph. If BASWA requires such additional open hours, then BASWA shall pay to Contractor the amount of \$15.00 for each additional hour that the recycling center is open each week; provided, that if the additional hours include hours wherein the recycling center will be opened on a particular calendar day, then closed for a minimum of one hour on the same calendar day, and subsequently opened again on the same calendar day, then BASWA shall pay to Contractor the amount of \$20.00 for each additional hour that the recycling center is open each week on such calendar day. As used in this Agreement, the term "solid waste jurisdiction area" shall be defined as the terms "county solid waste jurisdiction area" and "municipal solid waste jurisdiction area" are defined in Neb. Rev. Stat. §§13-2007 and 13-2012. All rules and regulations for the use of the recycling center shall be subject to the approval of City Council of City or the Board of Directors of BASWA.

3. Contractor shall operate and maintain such recycling center in such a manner that the recycling center shall not become a nuisance and in such a manner that the recycling center does not become injurious to the health, safety or welfare of the community or any of the nearby residents. Contractor agrees to maintain the recycling center site and all vehicles and equipment stored at such site in a neat and orderly condition.

4. Contractor agrees to allow the deposit at such recycling center of all recyclable materials generated within the BASWA territory without imposing any charge. As used in this agreement, the terms "recyclable materials" and "recyclables" shall mean any post-consumer non-durable goods such as, but not limited to, glass, plastic (HDPE/PET), newspaper (ONP), phone books, hard-bound books, cardboard (OCC), paper (MON/CPO & OMG), aluminum (UBC), tin, batteries, paint, bi-metal cans, oil, freon, wood pallets, household hazardous waste, and fluorescent light tubes. Contractor is not required to allow the deposit of washing machines, refrigerators, tires, dishwashers, air conditioners, clothes dryers, pressure tanks, freezers, and water heaters. For recyclables that can be sold to a buyer, Contractor agrees to remove, transport and dispose of such recyclable materials collected when a sufficient amount has been stored to justify transportation to a buyer, but not less frequently than once each month. Contractor agrees to properly remove, process and dispose of all other types of recyclables at least once each month. Notwithstanding any other provision of this Agreement, the City Administrator of City or his designee may require the Contractor to remove all or any portion of the recyclable materials stored at the recycling center upon one weeks' notice. Contractor agrees to remove the bins from the alley-cat trailers delivered to the recycling center by governmental bodies with who BASWA has service contracts, to place empty bins in all bin slots of such trailers and to remove, sort, process and transport the recyclables inside

the bins removed by Contractor. BASWA shall provide BASWA-owned bins for use by Contractor as described herein.

5. Contractor agrees to pay all costs associated with handling, processing, transportation and sale or disposal of recyclables deposited at the recycling center; provided, that BASWA shall pay all costs for processing of waste tires deposited at the recycling center by someone other than the Contractor. BASWA shall arrange for such processing of waste tires. Contractor further agrees that any employee transporting recyclables will obtain and properly maintain all proper licenses for operation of the vehicle used to transport such recyclables. Contractor shall further provide and maintain automobile liability and property insurance for all vehicles used for activities pursuant to this contract as follows:

Liability/combined single limit of \$500,000  
Collision coverage: \$500.00 deductible  
Other coverage: \$100.00 deductible  
Uninsured and underinsured motorist coverage of \$500,000 combined single limit

Contractor will retain all revenue generated through the sale by Contractor of recyclable materials collected at the recycling center.

6. Contractor shall allow the deposit of all yard waste generated within the BASWA territory at the recycling center from April 1<sup>st</sup> to December 1<sup>st</sup> of each year of the contract during all hours when the recycling center is open. Contractor agrees to maintain the portion of the recycling center used for yard waste collection in a neat and orderly condition. Contractor further agrees to provide an adequate number of its employees to receive and handle all yard waste, such as grass, leaves and garden waste that is generated within the BASWA territory and deposited at the recycling center. Contractor shall ensure that all plastic bags are removed from the yard waste. The Contractor's employees shall load and shall transport such yard waste to the solid waste disposal facility leased by BASWA within 2 days after deposit at the recycling center and shall deposit such yard waste for composting in the area of such solid waste disposal facility designated by the City Administrator of City or his designee. BASWA will provide to Contractor roll-off containers for use in transporting such material to the solid waste disposal facility. Contractor shall charge the following rates for each vehicle depositing yard waste at the recycling center:

- (a) Passenger car hauling yard waste other than when subsection (c) applies. \$1.00
- (b) Pickup hauling yard waste other than when subsection (c) applies. . . . \$2.00
- (c) Vehicle hauling yard waste for a person or business engaged in the business of removing other persons, firms or corporations' accumulations of grass or leaves ... \$3.00

7. Contractor agrees to collect recyclable materials from businesses and industries located within the BASWA territory.

8. Contractor agrees to keep at all times an up-to- date list of all complaints concerning the operation of the recycling center and that this list will include for each such complaint: the day and hour of the complaint, the day and hour action was taken on the complaint, what action was taken, whether and how the complaint was resolved, and the name, address and telephone number of the complainant.

9. Contractor agrees to cooperate with Keep Beatrice\_Beautiful, Inc., a Nebraska non-profit corporation, in its recycling activities. Contractor agrees to promote recycling by the residential, commercial and industrial establishments in BASWA's territory. Contractor is encouraged to conduct educational programs, conduct open houses, conduct pilot programs for recyclable collections, or conduct other promotional projects to enhance recycling.

10. Contractor agrees to prepare and submit to BASWA a comprehensive written report on activities completed pursuant to this Agreement on a quarterly basis on or before July 1st, October 1st, January 1st and April 1st of each year of the contract. Such report shall include, but not be limited to, the following:

- (a) The volume by cubic yards and by weight and by specific products of recyclable materials collected during the past quarter;
- (b) The receipts from the sale of recyclable materials to be submitted on a form approved by the City Administrator of City or his designee;
- (c) An accounting of all amounts collected for deposit of yard waste at the recycling center;
- (d) The activities engaged in by Contractor to promote recycling in accordance with Paragraph 9; and
- (e) The information described in Paragraph 8 of this Agreement.

Contractor also agrees to meet quarterly with the City Administrator of City or his designee to discuss the comprehensive report. City, BASWA, and their agents and representatives shall have the authority, during normal business hours, to arrange for and conduct an inspection of the books and records of the Contractor. If the BASWA elects to retain outside auditors in the performance of such audit, BASWA shall pay the cost of such audit.

11. It is agreed that personnel of either City or BASWA may enter the recycling center site at any time for any reason.

12. In conducting the activities pursuant to this Agreement, Contractor acts in the capacity of an independent contractor only.

13. The following acts or omissions shall be considered a breach of this Agreement; and Contractor shall be liable for liquidated damages for the following violations:

- a. Failure or neglect to have the recycling center open for any person to deposit recyclables and yard waste as required by Paragraphs 2 and 6 of this agreement - \$100.00 per day, for each day such failure or neglect occurs.
- b. Failure to remove yard waste from the recycling center premises and to deposit such yard waste as required by Paragraph 6 of this agreement - \$50.00 per day, for each day such failure continues.
- c. Failure to remove recyclables from the recycling center premises as required by Paragraph 4 of this Agreement - \$50.00 per day, for each day such failure continues.
- d. Failure to maintain insurance as required by Paragraphs 5 and 16 of this Agreement - \$50.00 per day, for each day such failure continues.
- e. Failure to promptly submit a comprehensive written report to BASWA in accordance with Paragraph 10 - \$100.00 per day, for each day such failure continues.

Grantee agrees that each of the foregoing failures shall result in injuries to the City and its citizens and institutions, the compensation for which would be difficult to ascertain and to prove. Accordingly Grantee agrees that the foregoing amounts are liquidated damages, not a penalty or forfeiture.

BASWA may require Contractor to enter a performance bond with a corporate surety in the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) to assure Contractor's faithful performance of this Agreement, and as security for any liquidated damages that may accrue as a result of Contractor's failure, neglect or refusal to perform any or all of the provisions of this Agreement. Contractor shall obtain such performance bond within thirty (30) days after receipt of written notification from BASWA to do so; and upon approval of the performance bond by the City Administrator, BASWA shall reimburse Contractor for the fee paid to the corporate surety for such performance bond. Action on such bond may be brought either by BASWA in its own behalf or in the name of BASWA for the use and benefit of the aggrieved person or persons or in a combination of both such above stated manners. Said bond must be approved as to form by the City Attorney of City and must be on file with the City Clerk of City on or before 30 days after receipt of written notification from BASWA to obtain the performance bond.

14. It is agreed that in the event Contractor shall fail and neglect to carry out and perform any of the terms or conditions of this contract, that BASWA may at its election, at any time thereafter, terminate and cancel this contract, and the decision of the Board of Directors of BASWA, to terminate this contract shall be final, binding and conclusive on the parties hereto.

15. Contractor agrees that it will comply with fair labor standards, as defined by Neb. Rev. Stat. §73-104 and by any amendments thereto, in the pursuit of its business and in the performance of this agreement. The Contractor agrees to comply with the Nebraska Fair Employment Practices Act, Neb. Rev. Stat. §48-1101 et. seq. The Contractor agrees that neither the Contractor nor its employees and agents will discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hiring terms, tenure conditions or privileges of employment because of his or her race, color, religion, sex, disability or national origin. Contractor agrees to comply with all federal, state and local laws, orders, ordinances and other requirements now or hereinafter affecting the recycling center, and any work performed by Contractor under this Agreement; and Contractor shall save and hold City and BASWA harmless from expenses and damages resulting from Contractor's failure to comply with Neb. Rev. Stat. §73-104, the Nebraska Fair Employment Practices Act, and all other laws, orders, ordinances and other requirements. Contractor shall be responsible for all costs incurred to comply with such laws, orders, ordinances and other requirements, including license fees and inspections by governmental agencies.

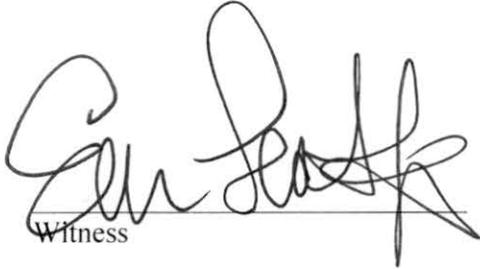
16. It is agreed that Contractor shall carry comprehensive general liability insurance, which shall at least include premises and operations protection and products and completed operations protection, covering bodily injury and property damage within minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) annual aggregate. Contractor shall comply with the laws of the State of Nebraska concerning workers' compensation insurance and shall keep in force such policy to protect persons employed as statutorily required. The insurance required in this paragraph shall also name the City and BASWA as additional insureds on a primary non-contributory basis. The insurance required by this paragraph and by Paragraph 5 of this Agreement must be secured from a responsible insurance company licensed to transact business in the State of Nebraska. Such company must have a minimum rating of "A" as assigned by the most recent BEST'S KEY RATING GUIDE. Contractor will file with the City Clerk evidence that the necessary insurance required by this paragraph and Paragraph 5 is in effect.

It is agreed that Contractor will indemnify, save harmless, defend and exempt City and BASWA, and all officers, officials, employees thereof from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, causes of action, lawsuits, strict liability claims, loss and attorney's fees incident to any work done by Contractor in the performance of this contract.

17. This agreement constitutes the entire agreement and understanding between the parties hereto and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.

18. Contractor shall not transfer or assign this contract in whole or in part without the written consent of BASWA. In the event of assignment, the assignee shall assume the liability of the Contractor.

Attest:



Witness

CITY OF BEATRICE, NEBRASKA  
A Municipal Corporation  
as Chairman for the Beatrice  
Area Solid Waste Agency, a joint entity  
"BASWA"



Stan Wirth, Chairman of BASWA

Witness:



Secretary

SANITARY GARBAGE CO., INC., a  
Nebraska corporation  
"Contractor"



President