

RESOLUTION NUMBER 5266

WHEREAS, the City of Beatrice, Nebraska has a contract with Sanitary Garbage Co., Inc., a Nebraska Corporation, ("Hauler") vesting the right and obligation in Hauler of collecting garbage, refuse, and rubbish within the corporate limits of the City; and

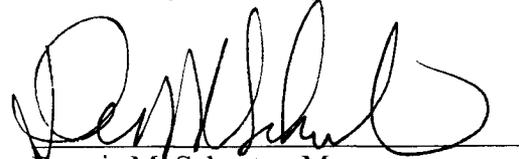
WHEREAS, said contract is due to terminate on March 31, 2011, and the Mayor and City Council desire to renew this contract for a five-year period.

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

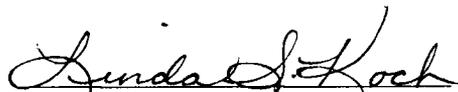
SECTION 1. That the Mayor and City Clerk are hereby authorized to execute the Agreement between the City of Beatrice, Nebraska and Sanitary Garbage Co., Inc., a Nebraska Corporation. Said Agreement shall be for a term of five (5) years beginning April 1, 2011 and ending March 31, 2016 with an option 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 That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 17th day of January, 2011.


Dennis M. Schuster, Mayor

Attest:


Linda S. Koch, City Clerk

AGREEMENT - HAULING

THIS AGREEMENT is made effective the 1st day of April, 2011, by and between the City of Beatrice, Nebraska, a Municipal Corporation, hereinafter referred to as "City", and Sanitary Garbage Co., Inc., a Nebraska corporation, hereinafter referred to as "Hauler".

WITNESSETH:

1. TERM. The term of this Agreement shall be for a period of five (5) years beginning on April 1, 2011 and ending on March 31, 2016. 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.

2. DEFINITIONS. It is agreed that as used in this agreement the terms "garbage", refuse", and rubbish" shall be defined as in Chapter 22 of the Beatrice City Code. It is also agreed the term "residential household" shall mean each single-family dwelling unit, each unit of a duplex, each unit of a condominium or townhouse, each mobile home, each unit of a multi-unit dwelling and all other residential units in the City of Beatrice. It is agreed that the term "multi-unit dwelling" as used in this agreement shall mean a building, such as an apartment, where there are three (3) more residential households. The term "Unacceptable Waste" as used in Paragraph 26 herein shall mean Hazardous Waste or any other portion of Solid Waste, the disposal of which, in the reasonable judgment of the Beatrice Area Solid Waste Agency, a joint entity, ("BASWA")(a) are banned from disposal in a solid waste disposal facility by federal or state law or regulation; (b) would cause applicable air quality or water effluent standards or other applicable standards or any air quality or water effluent or other permit issued to the BASWA solid waste disposal facility to be violated by the normal operation of the solid waste disposal facility; or (c) has a reasonable possibility of adversely affective the operation of the solid waste disposal facility. Hazardous Waste as used in Paragraph 26 herein shall mean (a) any material or substance which, by reason of its composition or characteristics, is regulated as a toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901, et seq., Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. Section 2605(e), Nebraska Environmental Protection Act, Nebr. R.R.S. Section 81-1501, et seq., as either may be replaced, amended, expanded or supplemented, or any laws of similar purpose or effect, and any rules, regulations or policies promulgated thereunder; (b) special nuclear or by-products materials within the meaning of the Atomic Energy Act of 1954; and (c) any other materials which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is ineligible for disposal at the solid waste disposal facility whether by reasons of being hazardous, harmful, toxic, dangerous or otherwise. The term "solid waste jurisdiction area" as used in this agreement shall be defined as follows:

- (1) If the governmental entity is a county: All areas of a county not located within the corporate limits of a municipality.
- (2) If the governmental entity is a municipality: All the incorporated areas of the city or of the village.

3. COLLECTION FROM ESTABLISHMENTS OTHER THAN RESIDENTIAL HOUSEHOLDS. In consideration of the covenants and agreements to be performed by Hauler, and under the conditions and provisions hereinafter contained and set forth, City does give, grant, and confer upon Hauler the exclusive right and privilege of collecting garbage, refuse and rubbish from business, commercial, institutional, and industrial establishments within the corporate limits of the City of Beatrice, Nebraska during the term of this contract. City agrees that while this contract is in force with Hauler it will not license or grant permits to any other person, firm or corporation for the collection, within the corporate limits of city, of garbage, refuse and rubbish of other persons, firms or corporations from business, commercial, institutional, and industrial establishments, except when Hauler is unable to perform or except for the purposes of conducting a resource recovery ("recycling") business, and City agrees that it will terminate all existing contracts and licenses granting such privilege, and, to the end that the garbage, refuse and rubbish with the City may be expeditiously and properly disposed of, City agrees that it will cooperate with Hauler in the enforcement of the ordinances of City, and particularly the provisions of the Code of the City of Beatrice, Nebraska with relation to the responsibilities of residential households and business, commercial, institutional and industrial establishments to provide suitable containers for garbage, refuse, and rubbish; provided, it is agreed that this agreement shall not be construed so as to prevent any person, firm or corporation, other than the City's contract hauler from removing other persons, firms, or corporations accumulations of garbage, refuse or rubbish for the purpose of recycling the same, or from removing other persons, firms or corporations accumulations of grass, trees or shrubbery, or cuttings from grass, trees or shrubbery the contents of septic tanks or cesspools, or building or construction material debris or rubbish, when the removal of said accumulations is incidental of a business operation, not primarily limited to the removal of such items or for the purposes of removing other persons, firms or corporations accumulations of grass or leaves and providing for the same to be composted rather than deposited at the solid waste disposal facility operated by the Beatrice Area Solid Waste Agency. City and Hauler also agree that Hauler will indemnify City from any and all liability, loss, or damage, City may sustain as a result of claims, demands, costs, including attorney's fees, or judgments arising from liability of the City under the federal or state antitrust laws as result of this Agreement. Hauler also agrees that if all or any portion of this Agreement is held to be in violation of the federal or state antitrust laws by any court of law, Hauler will not pursue any action in a court of law for breach of contract or under any other theory as a result of actions by the City taken pursuant to any said court decision.

City and Hauler agree that Hauler does not have an exclusive right and privilege of collecting construction and demolition waste.

4. COLLECTION FROM RESIDENTIAL HOUSEHOLDS. The Hauler shall collect and remove all solid waste, in accordance with the requirements set forth in this agreement and rules and regulations adopted by the City Council of City from time to time, from single-family dwelling units, duplexes, single units of condominiums and townhouses, mobile homes, multi-unit dwellings, and other residential households within the City of Beatrice as directed by City. Hauler agrees to provide a container with a lid for each multi-unit dwelling having 4 units or more at no additional charge when requested by the owner of such multi-unit dwelling or the authorized agent of the owner. Such container must be adequate to service such dwelling. Hauler agrees to adequately maintain such containers at all times.

5. RATES AND REGULATIONS FOR NON-RESIDENTIAL COLLECTIONS. It is agreed that Hauler will collect garbage, refuse and rubbish from business, commercial, institutional and industrial establishments in the City that shall employ him, during the term of this contract at frequencies required by said establishments during the entire year, except Sundays and the holidays described in Paragraph 26. It is agreed that the compensation for services described in this paragraph shall be paid by the customer to Hauler and shall be based on equal prices for equivalent quantities and kinds of garbage, refuse and rubbish, and on equal prices for the type of container used, and the number of collections required as follows:

(a) Rates for collection from business, commercial, institutional, and industrial establishments, except those establishments using roll-off containers:

April 1, 2011 through March 31, 2012.....\$2.65 per containered cubic yard per collection

April 1, 2012 through March 31, 2013.....\$2.65 per containered cubic yard per collection

April 1, 2013 through March 31, 2014.....\$2.75 per containered cubic yard per collection

April 1, 2014 through March 31, 2015.....\$2.75 per containered cubic yard per collection

April 1, 2015 through March 31, 2016.....\$2.75 per containered cubic yard per collection

(b) Rates for collection from business, commercial, institutional and industrial establishments using roll-off containers:

Service charge for non-compacted roll-off containers: \$75.00 per collection

Service charge for compacted roll-off containers: \$85.00 per collection

*An additional monthly fee for each rented container will be charged for container maintenance, as follows:

1½-yard container, each	\$14.50
2-yard container, each.	\$16.00
Larger than 2-yard container, each. . .	\$25.00
Compactor	\$95.00

It is also agreed the minimum monthly rate shall be the same as that charged to residential households. It is further agreed that the City Council of City shall finally determine the rates to be charged to a particular customer under this paragraph, and shall hear and determine disputes over such rates once each quarter, except that such Council shall determine said rates at each regular Council meeting during the first three months after the execution or renewal of this agreement and it is agreed that such decisions of said Council shall be final, conclusive and binding upon Hauler.

6. SOLID WASTE DISPOSAL FACILITY FEE FOR NON-RESIDENTIAL CUSTOMERS. The Hauler shall pay to City solid waste disposal facility fees for all business, commercial, industrial and institutional establishments served by Hauler per the fee schedule established by the Beatrice Area Solid Waste Agency.

Hauler shall remit the solid waste disposal facility fees described in this paragraph to City on or before the fifteenth (15th) day of each month following the month when services were rendered. At the time of said monthly remittance the Hauler shall submit a written report of all customers from which the above stated fees are collected, the amount of the fee collected from each customer, and the basis for the fee charged to each business, commercial, industrial and institutional customer. Such written report shall be in a form acceptable to the City Administrator of City or his designee.

7. DELINQUENT BILLS FOR NON-RESIDENTIAL CUSTOMERS. It is agreed that in the event any business, commercial, institutional, or industrial customer of Hauler located in City shall fail to make payment for any month of service performed by Hauler for a longer period than fifteen (15) days following the month such services were rendered, the Hauler shall, in such event, be no longer under any obligation to collect garbage, refuse or rubbish for such customer until such delinquency or delinquencies shall be paid. It is agreed that Hauler may charge no more than \$10.00 as a reconnect charge.

8. OCCUPATION TAX. It is understood by the parties that the Hauler shall be responsible for paying to City the occupation tax assessed to garbage, refuse and rubbish collection companies in Sections 24-86 and 24-87 of the Beatrice City Code.

9. RATES FOR COLLECTIONS FROM RESIDENTIAL HOUSEHOLDS. Except as otherwise provided in this paragraph, City shall pay to Hauler the following sums for each occupied residential household in the City served each month:

April 1, 2011 through March 31, 2012.....\$8.10 per residential household
April 1, 2012 through March 31, 2013.....\$8.55 per residential household
April 1, 2013 through March 31, 2014.....\$8.55 per residential household
April 1, 2014 through March 31, 2015.....\$8.90 per residential household
April 1, 2015 through March 31, 2016.....\$8.90 per residential household;

Provided, however, City shall pay to Hauler for residential households in the City of person(s) who are 62 years of age or more, who are receiving social security benefits, who qualify under income guidelines established by the City Council of City and who elect to receive garbage service at the reduced rate established for such persons by making application to the City, the following rates for each such occupied residential household served each month:

April 1, 2011 through March 31, 2012.....\$6.00 per residential household
April 1, 2012 through March 31, 2013.....\$6.35 per residential household
April 1, 2013 through March 31, 2014.....\$6.35 per residential household
April 1, 2014 through March 31, 2015.....\$6.60 per residential household
April 1, 2015 through March 31, 2016.....\$6.60 per residential household;

And provided, however, City shall pay to Hauler for residential households in the City of qualified person(s) with a disability occupied by a person who has determined to be disabled under Title II or Title XVI of the Social Security Act, 42 U.S.C. §401 et. seq., 42 U.S.C. §381 et. seq., who is receiving disability benefits pursuant thereto, who qualify under income guidelines established by the City Council of City, and who elects to receive service at the reduced rate established for such persons by making application to City, the following rates for each such occupied residential household served each month:

April 1, 2011 through March 31, 2012.....\$6.00 per residential household
April 1, 2012 through March 31, 2013.....\$6.35 per residential household
April 1, 2013 through March 31, 2014.....\$6.35 per residential household
April 1, 2014 through March 31, 2015.....\$6.60 per residential household
April 1, 2015 through March 31, 2016.....\$6.60 per residential household;

City shall provide Hauler with the number of residential households in the City whose eligible occupants have elected to receive service at this reduced rate at the time when City remits payments to Hauler each month.

City shall not pay to Hauler the fees set forth in this paragraph to Hauler for any residential household, which serves as the principal residence for an occupant but which occupant is living away from the City of Beatrice for at least three continuous winter months, during that period of time when service is not utilized by such occupant. City further shall not pay to Hauler the fees set forth in this paragraph when a tenant, occupant or property owner proves to the City Council of City that his or her garbage, refuse and rubbish has been lawfully collected and hauled to a facility licensed by the State of

Nebraska, Department of Environmental Quality by individual or entity other than the Hauler as provided for in Section 13-2020(4) of the Nebraska Revised Statutes.

10. RATES FOR SPECIAL SERVICES TO RESIDENTIAL

HOUSEHOLDS. City further agrees to pay to Hauler the following rates each month for special services for each residential household in the City receiving such special services, in addition to the basic rate set forth above in Paragraph 9:

a. The sum of \$3.00 each month for solid waste collection service at a location on the premises of a residential household other than as specified in Paragraph 12. City shall provide Hauler with a list of residential households whose occupants have elected to receive special collection service and the accommodation that is to be made for such residential household prior to the first day of each month.

b. The sum of \$7.50 each month during the months of April through November, inclusive, for the collection of accumulations of grass and leaves from residential households, except multi-unit dwellings, electing to receive such service during such months. City will provide Hauler with a list of residential households whose occupants have elected to receive such service prior to the first day of each month.

11. PAYMENT REQUIREMENTS. Payments due the Hauler from the City as set forth in Paragraphs 9 and 10 shall be paid no later than thirty (30) working days after the end of the month in which the service is rendered. It is agreed by the parties that Hauler shall not be paid any service charge for residential households which receive collection service during only part of a month unless a service charge was billed to the occupant by the Board of Public Works of City. The City may recover fees due to the City pursuant to Paragraphs 6, 13, and 14 by deducting the amount thereof out of any monies due or that may become due to Hauler as provided herein.

12. REGULATIONS FOR COLLECTIONS FROM RESIDENTIAL

HOUSEHOLDS. The parties agree as follows in regard to solid waste to be collected from residential households:

a. Hauler will collect all solid waste, except grass clippings and leaves, placed in galvanized metal containers, rigid plastic containers, well secured plastic trash bags, or containers provided for multi-unit dwellings by Hauler, and tree trimmings and brush as provided in this paragraph and as provided in rules and regulations adopted by the City Council of City from time to time during the term of this agreement on each of two regularly-scheduled collection days each week except the holidays described in Paragraph 26.

b. Hauler will collect grass clippings and leaves from residential households electing to receive such service placed in galvanized metal containers or rigid plastic containers during the term of this agreement on one regularly scheduled collection day each week. Hauler shall not be required to collect more than the contents of five 32-gallon containers

of grass or ten 32-gallon containers of grass and leaves during any one week. It is agreed that Hauler will not collect grass clippings and leaves placed in plastic trash bags.

c. Each container or bag when full shall not exceed 32 gallons in volume and the total weight shall not exceed 50 pounds. The Hauler shall also collect tree trimmings and brush that are tied into a bundle not to exceed two feet in girth and not to exceed four feet in length and brush. Tree branches or trunks in excess of three inches in diameter shall not be considered tree trimmings.

d. Except with regard to special collections as described in Paragraph 14 and collections from multi-unit dwellings, Hauler agrees that the point of collection for solid waste shall be alleyside where alleys are publicly maintained, and that if alleys are not maintained, said point of collection shall be curbside or adjacent to the street where there are not curbs. Hauler agrees that the point of collection for solid waste from multi-unit dwellings shall be an area adjacent to the multi-unit dwelling for depositing solid waste in common containers as approved by City.

e. Hauler agrees that Hauler will submit a proposed residential route to the City Council of City designating area points of collection as either alleyside or curbside, and that said Council shall have the right to make the final determination in regard to which parts of the City shall have curbside service and which parts of the City shall have alleyside service.

f. Hauler agrees that Hauler will collect said solid waste only between the hours of 6:00 a.m. and 7:00 p.m. with no collections on Sunday or the holidays described in Paragraph 26 except for the collection of grass clippings and leaves.

Any changes in existing or future collection day service by Hauler shall be provided to the City Clerk of City. It will be the Hauler's responsibility to notify all customers of the change by means of door-to-door notification at least ten (10) days prior to the change.

13. COLLECTION OF SOLID WASTE OUTSIDE CITY LIMITS. The Hauler shall not commingle solid waste collected from residential households located outside the corporate limits of Beatrice in the same garbage trucks with solid waste collected from residential households located within the corporate limits of Beatrice, unless such Hauler collects from such customers residing without the City limits solid waste disposal facility fees as established below in this paragraph and then remits such fees to the City. Such monthly solid waste disposal facility fees shall be as follows:

(a) For each and every residential household located within the solid waste jurisdiction areas of the governmental entities with whom the Beatrice Area Solid Waste Agency has entered into written Service Agreements other than the City of Beatrice from which garbage, refuse, or rubbish is collected by Hauler during such month: The monthly solid waste disposal facility fees established by the Beatrice Area Solid Waste Agency for such residential households; and

(b) For each and every residential household located within Gage County and outside of the solid waste jurisdiction areas of the governmental entities with whom the Beatrice Area Solid Waste Agency has entered into written Service Agreements from which garbage, refuse, or rubbish is collected by Hauler during such month: The monthly solid waste disposal facility fees established by the Beatrice Area Solid Waste Agency for such residential households located.

If Hauler chooses not to commingle solid waste from residential customers residing both within and outside the City limits of Beatrice, Hauler shall pay the solid waste disposal facility gate fees established for use of such solid waste disposal facility to City on or before the 15th day of each month following the month when services were rendered.

Hauler shall remit the solid waste disposal facility fees described in this paragraph to City on or before the fifteenth (15th) day of each month following the month when services were rendered. At the time of said monthly remittance the Hauler shall submit a written report of all customers from which the above stated fees are collected. It is agreed by the parties that the City may adjust the solid waste disposal facility fees set forth in this paragraph at any time, and Hauler shall begin to remit such adjusted fees to City beginning the first full month following notification by City of any adjustment in the solid waste disposal facility fees.

14. OTHER SPECIAL COLLECTIONS BY HAULER. It is agreed that for collection services performed by Hauler for any residential household, except as provided in Paragraphs 9, 10 and 13 above, the residential customer shall pay to Hauler such additional charges as are reasonable, such charges to be negotiated solely between each customer and Hauler. The Hauler shall pay a solid waste disposal facility fee to City equivalent to the fees established in subsections (1) through (6) of Paragraph 6 whether located within or without the City limits of Beatrice, Nebraska for such collections. If the residential household served by Hauler is located within Gage County and outside of the solid waste jurisdiction areas of the governmental entities with whom the Beatrice Area Solid Waste Agency has entered into written Service Agreements, then the Hauler shall also pay to City a surcharge of 40% of such additional charge in addition to the amount described above in this paragraph.

Hauler shall remit the solid waste disposal facility fees described in this paragraph to City on or before the fifteenth (15th) day of each month following the month when services were rendered. At the time of said monthly remittance the Hauler shall submit a written report of all customers from which the above stated fees are collected, the amount of the fee collected from each customer, and the basis for the fee charged to each customer. It is agreed by the parties that the City may adjust the solid waste disposal facility fees set forth in this paragraph at any time, and Hauler shall begin to remit such adjusted fees to City beginning the first full month following notification by City of any adjustment in the solid waste disposal facility fees.

15. LOCAL OFFICE. Hauler agrees to keep and maintain, during the period of this contract, a place of business within the City of Beatrice, which shall remain open on weekdays, except holidays described in Paragraph 26, between the hours of 8:00 o'clock a.m. and 1:00 o'clock p.m.; provided, that the place of business shall remain open until all trucks of Hauler have completed the collection routes for the respective day. The place of business shall be serviced by sufficient telephones with sufficient personnel to answer said telephones, receive complaints, and handle other business related to the solid waste collection service and where customers may pay their monthly service charge for the collection of solid waste, and to which address remittances may be mailed by the customer. Hauler agrees to provide a recorded message device for telephone calls during hours when the office is closed with pertinent information as to who to call to receive assistance. Hauler shall, however, on or before the fifth (5th) day of each month, mail to each non-residential customer a statement setting forth the amount then due Hauler from such customer, and it is further agreed that each statement sent by Hauler shall notify each such recipient that the collection service charges thereon are subject to final determination by the City Council of City.

16. RECORDS OF COMPLAINTS AND CUSTOMERS. Hauler agrees that he will at all times keep an up to date list of all complaints concerning collection service, that complaints concerning said service will be acted on within twenty-four (24) hours after the receipt by Hauler of said complaints, and that Hauler will, on or before the fifteenth day of each month, furnish the City Clerk of City with a list of all complaints received during the prior month, 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 complainant. It is further agreed that Hauler will, on or before the fifteenth day of each month, furnish the City Clerk with a list of the names and addresses of all those receiving the services provided for this agreement that were billed by Hauler during the prior month. It is further agreed that City annually will furnish the Hauler with a list of the names and addresses of all residential households that receive the services provided for this agreement during the month when the list is delivered to Hauler. The Hauler shall not use the City's name or other words implying municipal ownership on its equipment or stationary.

17. RULES AND REGULATIONS RESPONSIBILITIES. It shall be the responsibility of the City to acquaint the residential households with the rules and regulations for receiving collection services on an annual basis and at the time of annexation. Hauler shall be responsible to acquaint the business, commercial, institutional, and industrial customers with the rules and regulations for receiving collection services on an annual basis and at the time of annexation. Such rules and regulations shall conform to the provisions of this Contract and shall be subject to the approval of the City Council of the City.

18. REGULATIONS FOR EQUIPMENT, ETC. Hauler agrees that he will provide hydraulic load-packer dumping type garbage trucks which shall be used for

collection and disposing of garbage, refuse and rubbish within the City of Beatrice pursuant to this agreement. The beds of said trucks shall be water tight and shall be cleaned and disinfected once each week so as not to cause offense. The City Physician of City may inspect such trucks at any time during business hours, to determine if said trucks are water tight, clean, well painted and in good repair. If any of said trucks are not in such condition, they shall be reinspected within thirty (30) days and if said trucks to not conform to said specifications, they shall not be used by Hauler to perform services under this agreement. All trucks must comply with prevailing governmental regulations relating to air and noise pollution and must comply with OSHA requirements. A sufficient number of vehicles will be supplied by Hauler to collect the garbage, refuse and rubbish in accordance with the terms of this Agreement. Mechanical breakdown of a truck in no manner relieves the Contractor from meeting his obligations under the Agreement to complete his scheduled collection each day.

The Hauler shall use extreme care to pick up any spillage when transferring garbage, refuse, and rubbish from containers into Hauler's containers or equipment. Any spillage shall be immediately cleaned up and any debris blown or spilled as a result of the collection shall be cleaned up at the time of the regularly collection. The Hauler shall exercise care in handling of containers and shall place lids on top or inside of containers after emptying. The Hauler shall be liable for any and all damage to containers caused by the Hauler. Each truck shall be equipped with hand tools for cleaning up spillage.

Employees operating the Hauler's vehicles shall at all times possess and carry a valid and proper vehicle operator's license of the State of Nebraska. All employees of Hauler operating the Hauler's vehicles shall be trained to screen solid waste to know what is acceptable solid waste for the Landfill.

19. RECORDKEEPING AND AUDIT REQUIREMENTS. An annual audit of Hauler's books and records shall be conducted by an independent certified public accounting firm, and an original copy of such audit shall be submitted to City on or before October 1 of each year of the contract covering the prior fiscal year (July 1st – June 30th). Hauler shall pay all costs of such audit. In addition, the City and their agents and representatives shall have authority, during normal business hours, to arrange for and conduct an inspection of the books and records of the Hauler and its equipment. If the City elects to retain outside auditors in the performance of such audit, City shall pay the cost of such audit.

The Hauler agrees to notify the City Administrator of City within thirty (30) days of the commencement of any litigation, whether civil or criminal, involving Hauler, any officer or partner of Hauler or any shareholder of Hauler owning greater than five percent (5%) of the outstanding equity of the Hauler.

20. RATE REVIEWS. It is agreed that there shall be a rate review hearing concerning collection rates for collection from residential, business, commercial, institutional, and industrial establishments in the City upon the written notification of

either Hauler or City in April of 2011, and annually thereafter. The review of such rates based upon notification from the Hauler shall be limited to a review of labor costs and fuel costs. During such rate review, the City Council shall consider factors such as, but not limited to, the consumer price index number for the Region VII United States Department Labor, Bureau of Statistics Review C.P.I. for Urban Wage Earners and Clerical Workers (Kansas City, MO), local labor costs, local fuel costs, and reductions in the quantities and types of garbage, refuse, and rubbish to be collected pursuant to this agreement; and the City Council shall either affirm the rates set forth in Paragraphs 5 and 9 of this Agreement or establish new rates. The City Council may waive any or all of the requirements for review based upon notification from the Hauler under this paragraph, including time frequency of review and the factors to be considered in determining compensation rates, upon a written application and showing of emergency or unusual circumstances by Hauler.

21. LIABILITY INSURANCE AND INDEMNIFICATION. It is agreed that Hauler shall carry public liability insurance covering bodily injury and property damage with minimum limits of One Hundred Thousand Dollars (\$100,000.00) for each person, Three Hundred Thousand Dollars (\$300,000.00) for each occurrence, and One Hundred Thousand Dollars (\$100,000.00) property damage, in a responsible insurance company, and shall also keep in force workers' compensation insurance to protect persons employed by him, and evidence of such insurance shall be filed with the City Clerk of City. Such insurance company must be rated A-VII or better by A.M. Best or A or better by Standard and Poors. Said insurance shall contain a non-cancellation provision requiring thirty (30) days' notice to City prior to modification, lapse, or cancellation of coverage. It is further agreed that Hauler will indemnify, save harmless, and exempt City from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incidental to any work done in the performance of this agreement.

22. LIQUIDATED DAMAGES AND PERFORMANCE BOND. The following acts or omissions shall be considered a breach of this Agreement; and Hauler shall be liable for liquidated damages for the following violations:

- a. Failure to clean up solid waste spilled on private or public property within four hours of oral or written notification - \$50.00 per occurrence.
- b. Failure or neglect to collect solid waste from a residential household or business, commercial, industrial and institutional establishment as required by this Agreement within the immediate following working date from oral or written notice by the City - \$60.00 per occurrence.
- c. Failure to substantially comply with a material requirement of Paragraph 12 or Paragraph 16 of this agreement - \$30.00 per occurrence.

- d. Failure to return containers to original location and/or replace lids at the time the container is emptied - \$30.00 per occurrence.
- e. Use of a truck that does not conform to the specifications set forth in Paragraph 18 - \$100.00 per day, for each day such failure continues.
- f. Failure to promptly provide the annual audit or other information to the City in accordance with Paragraph 19 - \$200 per day, for each day such failure continues.
- g. Failure to submit the written report of all customers from which the solid waste disposal fees described in Paragraphs 6 and 13 are collected in a form acceptable to the City Administrator of City or his designee in accordance with Paragraphs 6 and 13 - \$25 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.

Hauler shall obtain and maintain, at its sole cost and expense, and file with the City Clerk, a corporate surety bond with a surety company authorized to do business in the State of Nebraska and found acceptable by the City Attorney, in the amount of Fifty Thousand Dollars (\$50,000.00) upon the execution of this agreement to secure Hauler's performance of its obligations and faithful adherence to all requirements of this agreement, and as security for any liquidated damages that may accrue as provided in this paragraph. Action on such bond may be brought either by the City in its own behalf or in the name of the City of the use and benefit of the aggrieved resident or residents or in a combination of both such above stated manners. The rights reserved to the City with respect to the bond are in addition to all other rights of the City, whether reserved by this contract or authorized by law; and no action, proceeding or exercise of a right with respect to such bond shall affect the City's rights to demand full and faithful performance under this contract or limit Hauler's liability for damages. Said bond must be on file with the City Clerk of City before this agreement shall be in full force and effect. The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew be exercised by the surety until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent."

23. TERMINATION RIGHTS. It is agreed that in the event Hauler shall fail or neglect to carry out and perform the conditions of this contract, City may at its election, at any time, terminate and cancel this contract, and the decision of the Mayor and Council, on termination of this contract shall be final, binding and conclusive on the parties. City and Hauler recognize the importance of recycling in today's world of scarce solid waste disposal facility space; and thus it is further agreed that during the term of this Agreement

Hauler shall contract with the Beatrice Area Solid Waste Agency, a joint entity, ("BASWA") to operate and maintain a place of business that is located within the City of Beatrice for the deposit of recyclable materials generated by residents of the City. If the Hauler shall fail or neglect to have a valid contact with BASWA as described in this Paragraph at any time during the term of this Agreement, then City may at its election, at any time, terminate and cancel this contract, and the decision of the Mayor and Council, on termination of this contract shall be final, binding and conclusive on the parties.

24. It is mutually agreed that if Hauler, due to weather conditions or other similar causes not due to the fault or negligence of Hauler and commonly referred to as an Act of God, is unable to perform any or all of the conditions found herein, then City agrees not to enforce the liquidated damages clause found herein, nor cancel the contract for such failure, refusal or neglect to perform because of such Act of God.

25. REQUIREMENT TO COMPLY WITH ALL LAWS AND ORDINANCES. It is agreed, notwithstanding any other provision of this agreement, that Hauler shall collect the garbage, refuse and rubbish within the corporate limits of City pursuant to the Code of Ordinances of City, and that City reserves the right to change the character of the type or kind of garbage, refuse and rubbish collection service provided by Hauler to City by amending or changing said Code. It is further agreed that any changes in said ordinances which affect the terms of this agreement shall be considered, for the purposes of Paragraph 24 of this agreement, as "unusual circumstances."

26. DISPOSAL OF SOLID WASTE COLLECTED. Except as otherwise provided in this section, Hauler shall be required to deposit all of the garbage, refuse, and rubbish collected within the corporate limits of the City of Beatrice at the solid waste disposal facility operated by the Beatrice Area Solid Waste Agency, a joint entity, ("BASWA solid waste disposal facility") during those hours when said solid waste disposal facility is open to the public. Hauler shall be allowed to deposit such solid waste at such solid waste disposal facility without paying any gate fees for the use of said solid waste disposal facility. It is agreed by the parties that the City Administrator of City or his designee shall allow Hauler to deposit garbage, refuse and rubbish collected from business, commercial, institutional and industrial establishments located within the corporate limits of the City at the BASWA solid waste disposal facility on each weekday except for holidays. Hauler shall further be allowed to deposit solid waste that is collected outside of the corporate limits of the City of Beatrice but within Gage County, Nebraska, and that is commingled with solid waste collected by the Hauler within the City of Beatrice at such solid waste disposal facility during hours open to the public without paying any gate fees for the use of said solid waste disposal facility. It is understood by the parties that the Beatrice Area Solid Waste Agency will establish certain holidays during which such disposal facility will not be open to the public.

It is agreed by the Hauler that representatives of BASWA shall have the right to inspect the solid waste delivered by the Hauler to the BASWA solid waste disposal facility to determine the presence of Hazardous Waste or Unacceptable Waste. The right

to inspect may include the right to require the Hauler to unload the contents in the receiving area for purposes of inspection. It is also agreed that BASWA representatives may test samples of such solid waste to determine whether it constitutes Unacceptable Waste or Hazardous Waste, and the costs of such tests shall be borne by the Hauler. If any vehicle is found to contain Hazardous Waste or Unacceptable Waste, BASWA may reject delivery thereof as provided in this paragraph. Upon notice from BASWA of the discovery of Unacceptable Waste or Hazardous Waste delivered by the Hauler, Hauler shall be responsible for removing any such waste from the BASWA solid waste disposal facility and for properly transporting and disposing of such waste in accordance with applicable laws and regulations. Hauler shall reimburse BASWA, on demand, for any costs incurred by BASWA as a result of the delivery to the BASWA solid waste disposal facility of Unacceptable Waste or Hazardous Waste.

Any accumulations of grass or leaves collected by Hauler shall not be deposited in the BASWA solid waste disposal facility but shall be deposited by Hauler at such locations as directed by the City Administrator of City or his designee. Hauler agrees to separate appliances (i.e., dishwashers, air conditioners, washing machines, clothes dryers, softeners, pressure tanks, refrigerators, freezers, and hot water heaters) and tires from all other garbage, refuse and rubbish collected by Hauler and to deposit such appliances and tires at the BASWA solid waste disposal facility only in such places as directed by the City Administrator of City or his designee. It is further agreed that Hauler shall not deposit for land disposal at the BASWA solid waste disposal facility any materials that are prohibited to be deposited at such solid waste disposal facility by state law or regulations adopted by Beatrice Area Solid Waste Agency; provided, however, Hauler and BASWA may agree that such materials will be transported to the solid waste disposal facility and separated by Hauler for special handling by BASWA.

Hauler is prohibited at all time from commingling garbage, refuse, and rubbish collected from customers located outside of Gage County, Nebraska within the same trucks with garbage, refuse or rubbish collected from residents of the City of Beatrice.

27. PROHIBITION AGAINST ASSIGNMENT OR TRANSFER. Hauler shall not assign this contract in whole or in part without the written consent of City, nor shall Hauler assign any money due or to become due to Hauler hereunder without the previous consent of City.

The principals of the Hauler shall not permit without the written permission of City, any material change in the ownership, structure, control, or operation of the Hauler including but not limited to i) merger into or consolidation with any other person, firm or corporation; ii) significant issuance of any shares of its capital stock having ordinary voting power for the election of members of the Board of Directors or other governing body of the Hauler; iii) changing the nature of its business as carried out at the date hereof; iv) substantial distribution, liquidation or other disposal of the Hauler's assets to the stockholders. Should the Hauler propose any material change in the ownership,

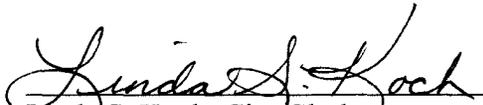
structure, control or operation of the Hauler, the City reserves the right to terminate and cancel this agreement.

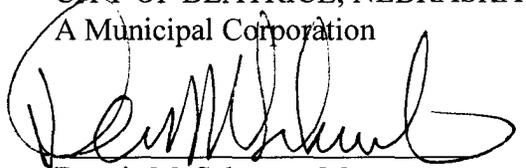
28. NO WAIVER; AMENDMENTS. Failure by the City or the Hauler to enforce any rights under this Contract does not constitute a waiver of such rights. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this contract. No amendment, modification or alteration of the terms of the contract shall be binding on any party unless the same is in writing, dated subsequent to the beginning date of this contract, and is duly executed by both parties to this contract.

29. FAIR LABOR STANDARDS REQUIREMENTS. Hauler agrees that it will comply with fair labor standards, as defined by Neb. Rev. Stat. §73-104 (Reissue 1990), and any amendments thereto, in the pursuit of its business and in the execution of this agreement.

EXECUTED this 17 day of January, 2011.

Attest:

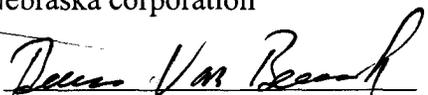

Linda S. Koch, City Clerk

CITY OF BEATRICE, NEBRASKA
A Municipal Corporation

Dennis M. Schuster, Mayor

EXECUTED this 13 day of January, 2011.

Attest:



SANITARY GARBAGE CO., INC.,
a Nebraska corporation
By 
Bruce Von Busch