

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
MAY 1, 2007 AGENDA**

Subject:	Type:	Submitted By:
SOLID WASTE MANAGEMENT AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOE SOUCIE PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute the Solid Waste Management Agreement which provides La Vista access to the Sarpy County Landfill.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

The original agreement with Sarpy County was done in April of 1996 and will expire on May 17, 2007. This new agreement will be for a period of three years and shall automatically renew for additional three year periods until such time as either party elects to terminate said agreement with a 30 day written notice.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AUTHORIZING THE MAYOR TO EXECUTE A SOLID WASTE MANAGEMENT AGREEMENT WITH SARPY COUNTY, NEBRASKA.

WHEREAS, the current Solid Waste Management agreement with Sarpy County will expire on May 17, 2007, and

WHEREAS, Sarpy County Landfill is owned by the County of Sarpy, Nebraska, and

WHEREAS, the City of La Vista desires to use the Sarpy County Landfill, and

WHEREAS, this agreement will permit the City of La Vista to dispose of solid waste on grounds provided by the Sarpy County Landfill,

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of La Vista, Nebraska, authorize the Mayor and City Clerk to enter into a Solid Waste Management Agreement with Sarpy County.

PASSED AND APPROVED THIS 1ST DAY OF MAY 2007

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

SOLID WASTE MANAGEMENT AGREEMENT

THIS AGREEMENT, is made and entered into on this ____ day of _____ by the County of Sarpy, State of Nebraska, a body politic and corporation, hereinafter "Landfill", _____ hereinafter "Hauler", and if applicable, _____, hereinafter "Third Party Hauler".

WHEREAS, Sarpy County Landfill is owned by the County of Sarpy, of the State of Nebraska, a body politic and corporate; and

WHEREAS, said Landfill is a solid waste facility as defined in the Nebraska Integrated Solid Waste Management Act (Neb. Rev. Stat. § 13-2001, *et seq.*) (Hereinafter "Act"); and,

WHEREAS, Landfill has certain duties and responsibilities under the Act; and,

WHEREAS, Landfill has promulgated certain duties and responsibilities under the Act; and,

WHEREAS, Hauler and/or Third Party Hauler, whether a federal, state or local governmental political subdivision, individual, partnership, corporation, or other entity, is engaged in the business of or has contracted for the collection of solid waste from residential and other sources, a/k/a primary service solid waste municipal hauling; and,

WHEREAS, Hauler and/or Third Party Hauler is, therefore, subject to the terms and conditions of the Act, and,

WHEREAS, Hauler and/or Third Party Hauler is further in the business of separating, storing, transporting, transferring, processing, treating and/or disposing of said waste, and,

WHEREAS, hauler and/or Third Party Hauler desires to use Landfill;

NOW, THEREFORE, in consideration of the above declarations and the mutual promises and covenants contained herein, LANDFILL and HAULER and/or THIRD PARTY HAULER agree;

I. DUTIES OF THE LANDFILL

- A. Landfill will permit Hauler to dispose of solid waste accumulated by Hauler on grounds provided by the Landfill.

II. TERMS AND CONDITIONS OF LANDFILL'S DUTIES

- A. **Compliance with Laws.** Landfill will comply with all federal, state, and/or local statutes, rules, regulations, and/or ordinances regarding solid waste and the disposal thereof.

- B. **Access to Landfill.** Access to Landfill shall be Monday through Saturday during regular business hours as posted. Reasonable access during those hours on such days to Landfill shall not be denied to hauler in the absence of a violation or violations of this agreement. Closure of Landfill due to blizzard, fire, wind, flood or other national occurrence/Act of God, time of emergency, war or other necessity shall not be considered a denial of reasonable access.
- C. **Limitations to Access.** Hauler's right of access to Landfill is not unlimited, and Hauler may be limited as to types and tonnage of waste which Hauler may deposit in Landfill, according to the rules and regulations of Landfill.
- D. **Billing.** By the fifth (5th) day each month, Landfill will provide a written statement for the amounts due from landfill by Hauler for the previous month(s).

III. **DUTIES OF HAULER**

- A. **Promise to Pay.** Hauler hereby agrees, covenants, and promises to pay Landfill for access to Landfill as set forth in Agreement.
- B. **Insurance.** The Hauler shall not begin work under this Agreement until all current insurance certificates have been filed with the Sarpy County Clerk. Access to Landfill may be denied if current insurance certificates are not on file.

The following insurance coverage's shall be kept in full force during the life of the Agreement and shall be primary with respect to any insurance or self-insurance programs covering the County, its commissioners/supervisors, officials, agents, representatives and employees.

Worker's Compensation and Employers Liability Insurance. The minimal acceptable limits as required by the State of Nebraska for Coverage A, Workers' Compensation and \$500,000 each accident for Coverage B, Employers Liability.

Commercial General Liability Insurance. Coverage should include broad form coverage written on a commercial general liability form and written on an occurrence basis. The coverage must protect against claims for damages resulting in bodily injury, including death, personal injury and property damage. The minimum acceptable limits of liability shall be \$1,000,000 each occurrence. Coverage should contain a general aggregate, such limit shall not be less than \$2,000,000. The products/completed operations limit shall not be less than \$2,000,000.

Vehicle Liability Insurance. Coverage shall be against claims for damages resulting from bodily injury, including death and property damage, which may arise from the operations of any owned, hired or non-owned vehicle. The minimum acceptable limit of liability shall be \$1,000,000 Combined Single Limit for each accident.

- C. Documentation of Source of Waste. Hauler, will, at the direction of Landfill, provide documentation as to amounts, sources, point of origin, nature, and type of solid waste accepted by Landfill on a monthly basis, or more often as directed, on forms provided by Landfill. Further, Hauler will, at the direction of the Landfill, cooperate with and provide any necessary information regarding amounts, sources, point of origin, nature and type of solid waste left with Landfill, which information may be necessary to provide for the public health, safety and welfare, and which information may also be necessary to allow Landfill to comply with any and all applicable federal, state, and local statutes, rules, regulations and ordinances.
- D. Primary/Secondary Responsibility. When Hauler is a governmental or political subdivision entity which is contracting with another (hereinafter "Third Party Hauler") for the actual physical pick-up, sorting, separating or transporting of waste to landfill, such other entity is required to be signatory to this Agreement; provided, however, such governmental or political subdivision entity shall be and remain primarily responsible for the charges for Landfill services the subject of this Agreement and the Third Party Hauler shall become secondarily liable for such charges.

For convenience, Third Party Hauler may be designated by hauler as the paying agent of hauler; but, such custom and practice shall not constitute a waiver of Landfill's right set forth above to collect such charges (whether current or delinquent) from Hauler in the event Third Party Hauler is in default of payment.

Hauler and/or Third Party Hauler shall use the Hauler Identification Number provided by Landfill for all transactions at the Landfill. The Hauler Identification Number shall be prominently displayed on both sides of the vehicle, in the manner required by the Landfill. Failure to do so will result in the Cubic Yard Rate being charged as opposed to the rate set forth herein.

IV COST OF ACCESS TO LANDFILL

- A. Basic Access for "Charge" Customers. For and in consideration of the use of said Landfill, Hauler, who is hereby granted "charge account" status, hereby agrees, covenants, and promises to pay to Landfill the amount of Ten Dollars (\$10.00) per month. Said fee shall be used for weighing, billing, invoicing, bookkeeping and administrative costs allowing Hauler to use the Landfill on a "charge" basis.

- B. **Price per Ton.** Furthermore, Hauler hereby agrees, covenants, and promises to pay to landfill the most recently approved rate schedule attached hereto which may be amended by the Sarpy County Board from time to time.
- C. **Payment Due.** Payment is due on the fifteenth (15th) day of each month.
- D. **Late Charges.** Amounts paid and received after the Twentieth (20th) day of the month shall be subject to interest at a rate of One and One-Half Percent (1 ½%) per month, or part thereof, (Eighteen Percent (18%) on an Annual Basis) until paid in full.
- E. **Access Limited due to Delinquent Accounts.** Should Hauler be more than Forty-Five (45) days delinquent, Hauler's access to Landfill may be denied unless and until the delinquency is cured. Should hauler be Sixty (60) or more days delinquent, Hauler's access to Landfill may be denied until the delinquency is cured and a security deposit is secured in the reasonable amount determined by Landfill.
- F. **Breach due to Delinquency.** Should Hauler be delinquent more than Thirty (30) days on Two or more occasions in any Twelve (12) month period, Landfill may require Hauler to provide a Surety Bond to guarantee payment in case of delinquency or default.

V. **HOLD HARMLESS AGREEMENT**

- I. Landfill and Hauler shall and do hereby save each other harmless and their officers, employees and agents from any and all claims and/or liability whatsoever due to or arising out of any acts, conducts, omissions or negligence of each to the other. Such covenant is to include each party's officers, employees, agents, or others acting by, for or under the direction of Landfill/Hauler/Third Party Hauler.

VI. **BREACH**

- I. If any provision of this Agreement is violated by either party, all rights hereunder shall be terminated at the option of the non-breaching party. This right shall be in addition to all other legal remedies available to the non-breaching party.

VII. **TERM OF AGREEMENT**

- I. The term for this Agreement shall be for a period of Three (3) years, commencing on the date first above written and shall automatically renew for additional Three (3) year periods until such time as either party elects to terminate said Agreement by delivering written notice to the other party at least Thirty (30) days prior to the effective date of such termination.

Changes other than financial shall be in writing and appended to this Agreement to reflect such changed circumstance(s). If the Hauler has a change in said name or corporation the Agreement shall be terminated and a new agreement will be required.

VIII. **AUTHORITY TO ACT**

- I. Each party hereto declares that it has taken all steps which are legally necessary or required to authorize this Agreement, and the rights, duties and obligations hereunder. Each party further represents and warrants that each has the power and authority to enter into this Agreement, to perform its obligations and to consummate the contemplated transactions.

IX. **NO RIGHT TO ASSIGN BENEFIT**

- I. Hauler hereby declares, represents, warrants and acknowledges that it cannot assign, delegate, transfer or otherwise allow any other person, partnership, corporation, business or entity to exercise any rights, duties or benefits regarding hauling solid waste to Landfill for deposit therein which may be available under this Agreement.

X. **NON-EXCLUSIVE NATURE**

- I. Hauler hereby agrees that this Agreement between Hauler and Landfill is not an exclusive Agreement, and that other Haulers will be allowed access to landfill under like, similar or different terms and conditions.

XI. **PUBLIC ACCESS TO RECORDS**

- I. Hauler acknowledges that certain transactions occurring pursuant to this Agreement are subject to the Public Records Act of Nebraska.

XII. **EACH PARTY NOT AGENT FOR THE OTHER**

- I. Each party declares, represents, warrants and acknowledges that it is not an agent for the other now nor will it be in the future. Each party is nor will become the employee of the other as a result of the contractual relationship created by this Agreement.

- XIII. A. Any notice permitted or required by this Agreement shall be served upon the parties hereto at the address, phone numbers or email addresses shown below, unless either party notifies the other in writing of a change in the below information.

Landfill: Name: Duwaine Brigman
 Affiliation: Sarpy County Landfill
 Address: 1210 Golden Gate Drive
 Papillion, NE 68046
 Phone: 402-253-2461
 Email: dbrigman@sarpy.com

Clerk: Name: Deb Houghtaling
 Affiliation: Sarpy County Clerk
 Address: 1210 Golden Gate Dr., Ste. 1116
 Papillion, NE 68046
 Phone: 402-593-4155
 Email: cvance@sarpy.com

Hauler: Name: _____
 Affiliation: _____
 Address: _____

 Phone: _____
 Email: _____

Third Party Hauler: Name: _____
 Affiliation: _____
 Address: _____
 Phone: _____
 Email: _____

XIV. COMPLIANCE WITH LAWS

- I. Hauler hereby agrees, covenants and promises to comply with all federal, state and/or local statutes, rules, regulations or ordinances governing the collection, separation, storage, transportation, transfer, processing and/or treating of solid waste disposal by haulers
- II. The parties hereto promise and agree to comply with all Federal and State laws and County ordinances, and such rules and other regulations which may apply to this Agreement, including but not limited to those set forth herein. Further, pursuant to Neb. Rev. Stat. §13-804(5) (Reissue 1991), the parties hereto acknowledge, stipulate and agree that this Agreement shall not relieve any public agency of any obligation or responsibility imposed upon it by law.
- III. Pursuant to Neb. Rev. Stat. §23-3113 (Reissue 1997), the parties hereto declare and affirm that no officer, member or employee of County, and no member of its governing body and no other public official of County who exercises any functions or responsibilities in the review or approval of the undertaking described in this Agreement, or the performing of either parties' obligations pursuant to this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or any partnership or association in which he or she is directly or indirectly interested; nor shall any employee of County, nor any member of its governing body have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- IV. Neither party hereto shall engage the service of any person or persons presently in the employ of the other for work covered by this contract without the written consent of the employer of such person or persons.
- V. Each party declares, represents, warrants and acknowledges that it is not an agent for the other now nor will it be in the future. Each party is an independent contractor and neither party is nor will become the employee of the other as a result of the relationship created by this Agreement.

XV. MISCELLANEOUS PROVISIONS

- I. This Agreement shall be interpreted under the laws of the State of Nebraska. It is understood and agreed by the parties hereto that if any part, term, condition or provision of this Agreement is held to be illegal or in conflict with any law of this State or of the United States, the validity of the remaining parts, terms, conditions or provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, condition or provisions held to be invalid.

IN WITNESS WHEREOF, we, the contracting parties, by our respective and duly authorized agents, hereto affix our signatures and seals in duplicate this _____ day of _____, 20__.

(SEAL)

COUNTY OF SARPY, NEBRASKA
A body Politic and Corporate

ATTEST:

Debra Houghtaling
Sarpy County Clerk

Chairman
Sarpy County Board of Commissioners

Approved as to form and content:

Deputy County Attorney

A Nebraska Hauler

By: _____

Title: _____

Third Party Hauler

By: _____

Title: _____

Attest:

Witness

Witness