

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-79

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH GREAT LAKES RECYCLING, INC. DBA SIMPLE RECYCLING OF CUYAHOGA COUNTY FOR THE CURBSIDE COLLECTION OF SOFT RECYCLING MATERIALS IN THE CITY OF BEREA, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea has identified a need to provide its residents with an alternative for the recycling and disposal of soft recyclables to reduce materials taken to landfills; and

WHEREAS, the City has learned of the work of Simple Recycling through its work with the City of Fairview Park, and the Administration and Council want to encourage recycling of soft materials as another way to reduce cost of use of landfills; and

WHEREAS, studies have shown that eighty-five percent (85%) of soft recyclables, specifically textiles, end up in a landfill rather than recycled or donated at charitable centers; and

WHEREAS, Great Lakes Recycling, Inc. dba Simple Recycling can provide services to collect, identify, haul, recycle and/or dispose of soft recyclables at no cost to the City of Berea; and

WHEREAS, the collection of soft recyclables by Simple Recycling will provide some revenues to the City of Berea; and

WHEREAS, providing residents of the City of Berea an option for disposal of soft recyclables is in the best interest of the City and the environment.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, County of Cuyahoga and State of Ohio:

SECTION 1. That the Council of the City of Berea hereby authorizes and directs the Mayor or his designee to enter into an agreement with Great Lakes Recycling, Inc. dba Simple Recycling for soft recycling in the City of Berea in substantially the form of the Agreement attached hereto as "Exhibit A", and urges the citizens of the City Berea to fully participate in this program.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that soft recycling should be immediately made available to residents to further reduce landfill usage as soon as possible. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: December 7, 2015

Gust J. Mellett
President Pro Tempore of Council

ATTEST: Alyson Egan
Clerk of Council

APPROVED: December 10, 2015
Cyril M. Kleem
Mayor

Approved as to Form:

Jessiah W. Hill
Director of Law

AGREEMENT FOR COLLECTION OF SOFT RECYCLABLES

This Agreement for the Collection of Soft Recyclables ("Agreement") is made and entered into this ___ day of _____, 2015, by and between the City of Berea of Berea, Ohio (herein referred to as "Berea") a municipal solid waste authority with a business location at 11 Berea Commons, Berea, Ohio 44017, and Great Lakes Recycling, Inc. dba Simple Recycling, an Ohio corporation (which with its successors and assigns is herein referred to as "Contractor") with a business address at 5425 Naiman Parkway, Solon, OH 44139.

WITNESSETH:

WHEREAS, Contractor is skilled and experienced in the collection and efficient recycling and disposition of Soft Recyclables; and

WHEREAS, the city of Berea of Berea desires to limit and restrict the quantity of Soft Recyclables which are deposited in the landfill; and

WHEREAS, the city of Berea of Berea has selected Contractor to collect, identify, haul, recycle and/or dispose of Soft Recyclables in the Service Area; and

WHEREAS, Contractor can provide such services and is in the business of and has the expertise, experience, resources and capability to perform the collecting, identifying, packaging, hauling, recycling and/or disposing of Soft Recyclables; and

Now, THEREFORE, in consideration of the premises and material promises set forth below and other consideration the receipt and sufficiency of which is hereby acknowledged by the parties, Contractor and the city of Berea of Berea (herein collectively called the "Parties") hereby agree as follows:

1. **Term.** The term of this Agreement shall begin upon approval by the city of Berea of Berea and continue for an initial four (4) year term. At the end of the initial four (4) year term Contractor and the city of Berea of Berea have the right to renew for an additional four (4) year term upon mutual agreement. Unless either Party provides written notice to the other Party at least sixty (60) days prior to the end of the initial term or any renewal thereof, the term shall automatically renew for an unlimited number of one-year terms. During the term, Contractor shall have the sole and exclusive rights to pick up Soft Recyclables in the Service Area through municipal contracted pick up.

2. **Termination and Breach.** Either party may terminate this Agreement without cause upon forty-five (45) days written notice. Should the city of Berea elect to terminate this Agreement without cause under the aforementioned provisions or if CONTRACTOR terminates this agreement for-cause, it shall not enter into any other Soft Recyclables program in the Service Area for a period of three (3) years unless undertaken with the Contractor, unless said restriction is waived in advance, in writing by the Contractor. However, should the city of Berea elect to terminate this Agreement for-cause due to an uncured breach of the Contractor, the city of Berea

shall not be precluded from entering into any other agreements for the collection, identification, packaging, hauling, recycling and/or disposing of Soft Recyclables.

In the event of a breach of the terms and conditions of this Agreement by either Party hereunder, the non-breaching Party may elect to terminate this Agreement upon providing the defaulting Party with a written notice of such default, and allowing the breaching Party a period of thirty (30) days from and after the date of such notice to cure the breach complained of to the satisfaction of the non-breaching Party. In the event said breach is not cured within said thirty (30) day period, this Agreement shall be terminated (for-cause) as of the last day of said period. In the event the city of Berea is the non-defaulting party, Contractor agrees to furnish services under this Agreement until such time as another Soft Recyclables collection and disposal contractor can be selected by the city of Berea.

3. Collection Schedule. Contractor shall divide the Service Area into collection areas to coincide with the city of Berea collection dates. Collections shall be made from Service Recipients on a regular schedule on the same day every other week (provision subject to ongoing discussion) in accordance with the existing recycling pickup schedule; however, Contractor reserves the right to alter the frequency of the scheduled pickups on an as needed basis.

Contractor shall not be required to perform any service under this Agreement on Holidays. Following all Holidays, each Service Recipient shall receive collection service on the day following its normally scheduled collection with the weeks work to be finished by Saturday. For a Monday Holiday, Monday through Friday collection shall be rescheduled for Tuesday through Saturday. For a Thursday Holiday, Thursday and Friday collection shall be rescheduled for Friday and Saturday. For a Friday Holiday, Friday collection shall be rescheduled for Saturday. (**Please provide city of Berea holiday schedule)

4. Collection. Contractor shall collect all acceptable set-outs of Soft Recyclables set-out for recycling and collection by Residential Customers. The decision of what is an "acceptable" Soft Recyclable shall be made in the reasonable discretion of Contractor. No service is provided to Commercial Customers and in no event shall Contractor be required to accept any Excluded Items (excluded items include, but are not limited to the following items: garbage, hazardous waste, carpet, newspapers, mattresses, large furniture, large appliances, yard waste). Contractor must collect all Soft Recyclables set out in the Recycling Container. Contractor shall *not* be responsible for collecting Soft Recyclables which have fallen or been placed Curbside but are not in a Container. Contractor agrees to operate collection vehicles in such a manner to prevent materials from being blown from the vehicle. If at any time during collection and transport, Soft Recyclables are spilled onto a street, sidewalk, or private property, Contractor shall clean up and place in the collection vehicle all Soft Recyclables before the vehicle proceeds to the next stop on the collection route or shall promptly make all other reasonably necessary arrangements for the immediate clean up of spilled Soft Recyclables. Contractor agrees to remove and dispose of all Soft Recyclables at no cost to the city of Berea. Contractor may interrupt the regular schedule and quality of service because of street repairs, snow or other closures of public routes, which in Contractor's reasonable discretion make the pick-up of the Soft Recyclables from a Service Recipient impracticable under the circumstances.

5. **Contamination and Improper Set Out.** If Contractor encounters any improperly packaged Soft Recyclables or other contaminants in the Container, Contractor may leave those materials in the Container or remove them from the Container and leave them Curbside. Contractor must place a tag on the contaminant(s) that is not collected, collect the acceptable items, and leave contaminants at Curbside.

6. **Set Out Procedures.** Residents shall place Soft Recyclables into Containers and place Containers at Curbside for collection. Overflow material shall be placed adjacent to the Container(s) in plastic bags or other easily handled container. Soft Recyclables shall not be set out in tied bundles. Contractor must collect all Soft Recyclables that are set out in this manner and are placed within seven (7) feet of the Curbside. Containers shall be placed in a manner that will not interfere with or endanger the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Containers shall be placed as close as practicable to an access point for the collection vehicle. Contractor may decline to collect any Soft Recyclables not set out in accordance with this paragraph.

7. **Ownership.** Soft Recyclables set out for collection on the regularly scheduled collection day shall belong to Contractor from the time of its set out. Soft Recyclables physically collected by Contractor shall be deemed acceptable Soft Recyclables for the purposes of its obligations under this Agreement.

8. **Inventory of Containers.** During the term of this Agreement, Contractor shall purchase (at its sole cost) and maintain an inventory of acceptable and approved Containers for distribution to Service Recipients. Prior to commencement of this Agreement, Contractor shall provide new Containers to each Service Recipient. Containers shall initially be delivered to Service Recipients with an informational brochure on the recycling collection program (of Soft Recyclables) produced and printed by the contractor and approved by the city of Berea.

9. **Missed Collections and Complaints.** Service Recipients shall be instructed to report missed collections and complaints to Contractor. Contractor shall give prompt and courteous attention to all reported missed collections and complaints.

10. **Contractor's Cost and Equipment.** Contractor agrees to furnish all labor, equipment, tools, and services required and necessary for the collection and disposal of Soft Recyclables within the Service Area and provide qualified supervisory personnel to direct the activities of Contractor under this Agreement. All equipment used by Contractor shall be kept and maintained in a clean and professional manner.

11. **Contractor's Fee.** Contractor shall pay to the city of Berea a contract fee of One Cent (\$0.01) per pound of gross receipts of Soft Recyclables in the Service Area. Payments shall be made to CITY OF BEREA not less than thirty (30) days following the close of each calendar month during the term of this Agreement. Weight shall be verified by public scale weight receipts or other methods agreed to by both parties.

12. **Publication Information and Education Program.** The city of Berea shall plan and coordinate a public education and information program to inform Service Recipients of this recycling program the contents of which and the dates shall be approved in advance by Contractor. Contractor may distribute its own promotional materials subject to city of Berea

approval. Contractor shall participate in city of Berea directed promotion and education efforts as outlined below:

1. During the course of the routine recycling pick up, provide and distribute notices regarding rejected materials and proper set out procedures.
2. Training of employees to deal courteously with customers on the telephone and on-route to promote the collection service and explain proper material preparation.
3. Coordinate with the city of Berea for distribution of written promotional and instructional materials directly to Service Recipients.
4. Be available a minimum of two times per year to participate in promoting the collection service at an area fair, neighborhood association program, school, or community event.
5. Provide advice to the city of Berea on promotion and education material content and presentation.

13. Telephone and Customer Service. Contractor shall maintain and adequately staff a local toll-free telephone number where complaints of Service Recipients shall be received, recorded and handled to the best of Contractor's abilities, between the hours of 9:00 AM and 4:30 PM Monday through Friday excluding Holidays. Typically, all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, Contractor shall make subsequent attempts on the next working day after the original call. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. All attempts to contact the caller shall be recorded on the log kept by Contractor.

14. Marketing and Disposition of Recyclable Material. Contractor shall be solely responsible for the marketing and sale of collected Soft Recyclables, and shall be solely responsible for the storage and disposition of the Soft Recyclables in the event it is unable to sell the Soft Recyclables in a timely manner.

15. Insurance. During the term of this Agreement Contractor agrees to keep in force, with an insurance company licensed to transact business in the state of Ohio, an "occurrence basis" insurance policy or policies indemnifying, defending and saving harmless the city of Berea from all damages (except for damages caused by the city of Berea's own negligence, willful misconduct or failure) which may be occasioned to any person, firm, or corporation, whether damages are by reason of any willful or negligent act or acts on part of Contractor, its agents or employees, with limits no less than:

a. General Liability: One Million and no/100 Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage.

b. Vehicle Liability: Two Million and no/100 Dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage.

c. Worker's Compensation/Industrial Insurance: Limits as required by the State of Ohio.

The general liability provisions in automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) The city of Berea, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of

Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor.

- (ii) Contractor's insurance coverage shall be primary insurance as the city of Berea, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the city of Berea, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the city of Berea, its officers, officials, employees, or volunteers.
- (iv) Contractor's insurance shall apply separate to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, nor reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the city of Berea.

16. Indemnification and Hold Harmless. Except for the city of Berea's own negligence, willful misconduct or failures, Contractor shall save, keep, and hold harmless the city of Berea, its officers, agents, employees, and volunteers from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of Contractor, any of Contractor's employees, or any subcontractor. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the city of Berea, its members, officers, employees, and agents, Contractor's liability hereunder shall be only to the extent of Contractor's negligence. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

17. Compliance with Law. Contractor agrees to comply with all published ordinances, laws, rules, and regulations, together with amendments thereto, of the State of Ohio, the United States of America, or the city of Berea pertaining to the services to be performed hereunder.

18. Taxes. Contractor agrees to save the city of Berea harmless from any and all taxes or assessments of any kind or nature levied by any political subdivision upon Contractor by reason of services rendered for Soft Recyclables and disposal for the city of Berea.

19. Employee Conduct. All Contractor personnel must maintain a courteous and respectful attitude toward the public at all times. At no time must they solicit, request or receive gratuities of any kind. Contractor must direct its employees to avoid loud and/or profane language at all times during the performance of duties. Any employee of Contractor who engages in misconduct or is incompetent or negligent in the proper performance of duties or is disorderly, dishonest, intoxicated, or discourteous must be removed from service under this contract by Contractor.

20. Monthly Reports. Contractor shall provide monthly project status reports. These reports will be due within fifteen (15) days of the close of the month being reported. At a

minimum, the reports shall include detailed data to allow analysis of collection and processing efficiencies including pounds of Soft Recyclables collected in the prior month and the payment of the required fee to the city of Berea.

21. Inspections. Upon reasonable advanced request, the city of Berea reserves the right to inspect the facilities, equipment and operations of Contractor to assure itself of the appearance and compliance with contractual provisions of this Agreement. Upon reasonable advance request, the city of Berea reserves the right to review the records kept on the Soft Recyclables collected under the terms of this Agreement to test and validate the weights claimed. The city of Berea agrees to notify Contractor, in writing, at least forty-eight (48) hours prior to such inspections and shall indicated the reasonable basis for requesting the inspection.

22. Meetings and Communications. In order to minimize problems and to provide thereafter a forum for discussing and resolving any issues that may arise, the parties agree to meet on a regular basis and to adopt communications procedures as follows:

Meetings After Collection Begins. After the Collections begin, meetings shall be held at least on a quarterly basis, unless otherwise mutually agreed to, between representatives of the parties. Such meetings shall be held for the purpose of reviewing and discussing day-to-day operations, promotion, public information and public relations.

Designation of Representatives. Each party shall send at least one representative to each meeting. The city of Berea shall send to each meeting at least one staff member with operation expertise. Each party shall designate one, and only one, representative as its Lead Representative. If a party sends only one representative to any meeting, that person shall be conclusively presumed to be its lead representative.

23. Compliance with Laws and Regulations. Contractor agrees that, in performance of work and services under this contract, Contractor will qualify under and comply with any and all known federal, State and local laws and regulations now in effect, or hereafter enacted during the term of this contract, which are applicable to Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

24. Severability. Should one or more of the provisions of this Agreement be held by any to court to invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect, provided that the continuation of such remaining provisions does not materially change the original intent of this Agreement.

25. Independent Contractor Status. In the performance of services pursuant to this Agreement, Contractor shall be an independent contractor and not an officer, agent, servant or employee of the city of Berea. Contractor shall have exclusive control over the details of the service and work performed and over all persons performing such service and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, Contractors and subcontractors, if any. Neither Contractor nor its officers, agents, employees or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to the city of Berea employees and Contractor expressly waives and claim it may have or acquire to such benefits.

26. **No Assignment.** This Agreement, or any interest herein, shall not be transferred, sold, nor assigned by either Party to any person, firm, or corporation, without the prior written consent of the other Party.

27. Definitions.

Commercial Customer: The term "Commercial Customer" means non-residential customers, including businesses, public or private schools, institutions, governmental agencies and all other users of commercial-type Garbage collection services.

Container: The term "Container" means Contractor supplied bag, box or bin for the Residential Customer to place Soft Recyclables.

Contractor: The word "Contractor" means Great Lakes Recycling, Inc. dba Simple Recycling which has contracted with the city of Berea to collect and dispose of Soft Recyclables.

Curb or Curbside: The words "Curb" or "Curbside" relate to the homeowners' property, within five (5) feet of the Public Street or Private Road without blocking sidewalks, driveways or on-street parking. If circumstances preclude such a Curbside shall be considered a placement suitable to the resident, convenient to Contractor's equipment, and mutually agreed to by the city of Berea and Contractor.

Date of Commencement: The term "Date of Commencement" means the date that Contractor agrees to commence the provision of collection and other services as described throughout this Agreement.

Date of Execution: The term "Date of Execution" means the date that this Agreement is approved by the city of Berea and executed by a designated and authorized representative.

Excluded Items: The term "Excluded Items" means Garbage, Hazardous Waste, large furniture, large appliances such as refrigerators, stoves, washers and dryers, magazines, newspapers, car seats, cribs, mattresses, paint, tires, cleaners, etc. and any item heavier than fifty (50) pounds.

Garbage: The term "Garbage" means all putrescible and non-putrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, grass, yard debris, leaves, swill, demolition and construction wastes, dead animals piles of debris, car parts, construction or demolition debris, any item that would be considered Hazardous Waste, or stumps.

Hazardous Waste: The term "Hazardous Waste" means any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in any existing or future local, state or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to any substance that is defined as hazardous by 40 C.F.R. Part 261 and regulated as hazardous waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments ("HSWA") of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or any other federal statute or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA or any Ohio statute or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by federal law.

Holiday: The term "Holiday" means the following days: New Year's Day, Martin Luther King's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day. (**We will follow the city of Berea recycling holiday schedule)

Private Road: The term "Private Road" means a privately owned and maintained way that allows for access by a service truck and that serves multiple Residences.

Public Street: The term "Public Street" means a public right-of-way used for public travel, including public alleys.

Residence: The term "Residence" means a living space individually rented, leased or owned.

Residential Customer: The term "Residential Customer" means individuals residing in a Residence.

Service Area: The term "Service Area" means the corporate limits of the municipalities participating in the city of Berea's refuse collection as of the Date of Commencement, and thereafter, shall be the collection area as may it be amended thereafter by the city of Berea.

Service Recipients: The term "Service Recipients" means Residential Customers in the Service Area.

Soft Recyclable: The term "Soft Recyclable" means items of an individual weight less than fifty (50) pounds and can be carried by one person. Soft Recyclables include primarily men's, women's and children's clothing as well as items such as jewelry, shoes, purses, hats, toys, pictures, mirrors, blankets, drapes and curtains, pillows, rags, sewing scraps, sleeping bags, small furniture, small appliances, irons, radios and audio equipment, TVs and video equipment, cameras, lamps, hairdryers, tools, toasters, microwaves, coffee makers, computers and household or consumer electronics, silverware, dishes, pots and pans, glasses and the like. The definition of Soft Recyclable is subject to modification in the discretion of Contractor based upon experience gained during the term of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

City of Berea Ohio

By: _____

Its: _____

Great Lakes Recycling, Inc. dba Simple
Recycling

By: _____

Adam Winfield

As its President