

INTERGOVERNMENTAL SERVICES AGREEMENT

by and between
SEDGWICK COUNTY, KANSAS
and
THE CITY OF DERBY, KANSAS

This Agreement made as of this ____ day of _____, 2016, by and between Sedgwick County, Kansas ("County"), and the City of Derby, Kansas ("City").

WITNESSETH:

WHEREAS, County wishes to make available certain Christmas tree recycling services, as set forth below, to its residents; and

WHEREAS, County warrants that it is capable of providing said Christmas tree recycling services;

WHEREAS, the parties hereto have the authority to enter into this agreement.

NOW, THEREFORE, in consideration of the following mutual conditions, covenants and promises contained herein, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide tree recycling services to residents of Sedgwick County during specific times of year so that said trees can be ground into mulch for subsequent use by the residents of Sedgwick County ("TreeCycle Program").

2. **Site.** As used herein, the term "site" shall mean only the locations set forth in Exhibit A, which is attached hereto and incorporated as if fully set forth herein.

3. **Term.** This Agreement shall be for a period of five (5) years, commencing December 1, 2016, and ending November 30, 2021.

4. **Period of Service.** Services pursuant to the Treecycle Program shall be available from on or about December 22nd of each year of this Agreement through and including January 23rd of the subsequent year (i.e., from December 22, 2016, through and including January 23, 2017).

5. **Site Set-Up and Maintenance.** All TreeCycle sites shall be set up and ready to receive trees from the general public by five o'clock pm (5:00 pm) on December 22nd of each year of this Agreement. Each site shall be marked by signs that are clearly and easily visible to the general public and that are posted in accordance with the applicable sign code. City shall be responsible for obtaining and maintaining such signs for and throughout each TreeCycle event.

6. **Grinding.** County agrees that all trees brought to or within one hundred (100) feet of any site(s) during the period of service (as that term is defined in Section 4 hereof) will be ground into a medium-grade mulch. This grinding shall occur at least twice during each period of services, or more frequently as may be required so as not to allow the trees to become a nuisance or danger to any surrounding homes and/or businesses. Grinding shall be accomplished using one or both of the following

methods: (1) grinding the trees on site and leaving the resulting mulch at the site, or (2) hauling the trees offsite for grinding and returning the resulting mulch to the site(s).

7. **Mulch.** The mulch created from the grinding of trees shall be deposited at the site(s) for the general public to pick up and take for its use. Said mulch shall not be placed on any sidewalks, parking areas or in any location where it will interfere with public access. Mulch shall be easily available for the public to load. Mulch shall not be supplied to contractors, subcontractors, vendors or commercial entities.

8. **Handling of Material.** County shall be responsible for providing all means of handling trees and delivering the resulting mulch back to the site(s). City shall not be required to, but may agree to, assist in the handling of the trees and/or resulting mulch in any way whatsoever, including the loading or unloading of the trees or mulch or the hauling of the trees or mulch.

9. **Damage to Equipment.** City is not responsible for any personal or property damage that might result from any foreign material being mixed in with the tree debris brought to the site(s). It is County's responsibility to inspect the trees prior to grinding and to remove and dispose of any foreign object and/or materials therein.

10. **Compensation.** Both parties agree that no compensation or remuneration shall be exchanged, requested or expected for activities in connection with this Agreement. At no time shall any representative from the City be construed as a County employee or eligible, under any circumstances, for any County benefits, including, but not limited to, workers compensation. Likewise, at no time shall any representative of the County be construed as a City employee or eligible, under any circumstances, for any City benefits including, but not limited to, workers compensation.

11. **Hold Harmless.** County shall at all times save and hold harmless City from all liability, costs, damages and expenses of any kind, including reasonable attorney's fees, for which City may become liable to any person(s) or entities by reason of any claim or damages to the extent caused by acts or omissions of County, its elected and appointed officials, officers, managers, members, employees or agents relating to County's obligations under this Agreement.

City shall at all times save and hold harmless County from all liability, costs, damages and expenses of any kind, including reasonable attorney's fees, for which County may become liable to any person(s) or entities by reason of any claim or damages to the extent caused by acts or omissions of City, its elected and appointed officials, officers, managers, members, employees or agents relating to City's obligations under this Agreement.

12. **Notice.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Sedgwick County Environmental Resources
Attn: Scott Bowen
1144 S. Seneca
Wichita, Kansas 67213

and

Sedgwick County Counselors Office

Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

City: City of Derby
Attn: City Manager
611 N Mulberry RD STE 300
Derby KS 67037

and

Derby Public Works
Attn: Mike Day, Parks Superintendent
611 N Mulberry RD STE 300
Derby KS 67037

County agrees to have its representative, at all times during the provision of services period set forth in Section 4 hereof, maintain a beeper, cell phone or some form of communication by which he or she may be easily contacted so that messages, concerns and/or other issues that may arise during the provision of services period may be quickly and easily conveyed.

7. Termination. Either party shall have the right to terminate this Agreement upon thirty (30) days' written notice.

8. Entire Agreement. This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor shall it be of any force or effect.

9. Assignment. Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by either party without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.

10. Amendments. Neither this Agreement nor any rights or obligations created by it shall be amended by either party without the prior written consent of the other. Any attempted amendment without such consent shall be null and void.

11. Subcontracting. None of the work or services covered by this Agreement shall be subcontracted without the prior written notice to City. County shall remain totally responsible for all actions and work performed by its subcontractors. All subcontracts must conform to applicable requirements set forth in this Agreement and in its appendices, exhibits and amendments, if any.

12. Waiver. Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.

13. **Force Majeure.** Neither party shall be held liable if a failure to perform under this Agreement arises out of causes beyond the control of the party. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, labor strikes and freight embargoes.

14. **Governing Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

15. **Severability Clause.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.

16. **Incorporation of Documents.** Exhibit A (TreeCycle Collection/Distribution Sites) are attached hereto and is made a part hereof as if fully set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first set forth above.

SEDGWICK COUNTY, KANSAS

CITY OF DERBY, KANSAS

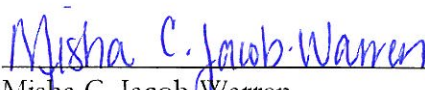
JAMES M. HOWELL, Chairman
Commissioner, Fifth District



KATHLEEN B. SEXTON
City Manager

APPROVED AS TO FORM ONLY:

ATTESTED TO:



Misha C. Jacob-Warren
Assistant County Counselor

Kelly B. Arnold
County Clerk

EXHIBIT A
TREECYCLE COLLECTION/DISTRIBUTION SITES

1. 2801 E. James, Derby KS

EXHIBIT B
SEDGWICK COUNTY MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in the Sedgwick County Mandatory Contractual Provisions Attachment, which is attached hereto, are hereby incorporated in this Agreement and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said contract being the ____ day of _____, 20 ____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Choice of Law:** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation:** If, in the judgment of the Chief Financial Officer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, County may terminate this Agreement at the end of its current fiscal year. County agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to County under the Agreement. County will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon termination of the Agreement by County, title to any such equipment shall revert to Contractor at the end of County's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the County or the Contractor.
4. **Disclaimer of Liability:** County shall not hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement:** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the County has consented to a jury trial to resolve any disputes that may arise hereunder. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any Agreement and/or this Contractual Provisions Attachment will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract:** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. County is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, County shall provide to the Contractor a certificate of tax exemption.

County makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.
9. **Insurance:** County shall not be required to purchase any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the County to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest:** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the County and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the County. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any County employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the County.
11. **Confidentiality:** Contractor may have access to private or confidential data maintained by County to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the County promptly at the request of County in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by County, shall destroy or render such data or material unreadable.
12. **Cash Basis and Budget Laws:** The right of the County to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure

that the County shall at all times stay in conformity with such laws, and as a condition of this Agreement the County reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the County cumulatively total \$5,000 or less during the County's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including Sedgwick County, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the County in relation to this Agreement prohibits the County from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the County in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. County shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify County within the same five (5) business days, with the County reserving the same right to terminate for breach as set forth herein.
15. **HIPAA Compliance.** Contractor agrees to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (codified at 45 C.F.R. Parts 160 and 164), as amended ("HIPAA"); privacy and security regulations promulgated by the United States Department of Health and Human Services ("DHHS"); title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, as amended ("HITECH Act"); the Genetic Information Nondiscrimination Act of 2008 ("GINA"); provisions regarding Confidentiality of Alcohol and Drug Abuse Patient Records (codified at 42 C.F.R. Part 2), as amended (collectively referred to as "HIPAA"), to the extent that the Contractor uses, discloses or has access to protected health information as defined by HIPAA. Under the final Omnibus Rule effective March 2013, Contractor may be required to enter into a Business Associate Agreement pursuant to HIPAA.
16. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this attached is incorporated.
17. **Tax Set-Off.** If, at any time prior to or during the term of any executed agreement, Contractor is delinquent in the payment of real and/or personal property taxes to Sedgwick County, and the delinquency exists at the time payment is due under the agreement, County will offset said delinquent taxes by the amount of the payment due under the agreement and will continue to do so until the delinquency is satisfied, pursuant to K.S.A. 79-2012.