

## RECYCLING AGREEMENT

WHEREAS, the City of Overland Park, Kansas, hereafter referred to as the "City", has agreed to contract with Deffenbaugh Industries Incorporated , hereafter referred to as the "Contractor", to obtain recycling and composting services as specified in this Agreement; and,

WHEREAS, Contractor has agreed to provide those services.

NOW, THEREFORE, City and Contractor agree as follows:

### 1.1 Definitions

#### Buyer:

A person or persons with whom the Contractor has an agreement for the purchase of material collected during the duration of the contract.

#### The City

The City of Overland Park, Kansas.

#### Collection Hours:

The time during which collection of recyclable or compostable materials is authorized by the City. Collection shall begin no earlier than 7:00 A.M. and shall end no later than 7:00 P.M. unless extension of hours is approved in writing by the City.

#### Collection Vehicle:

Any vehicle approved in writing by the City for collection of recyclable and compostable materials within the corporate limits of the City and that bears signage approved by the city.

#### Compostable Materials:

Leaves, grass, yard trimmings, tree limbs of less than 4" diameter and other organic yard materials.

#### Container(s):

An 18 gallon recycling container, or a compost container, of the type specifically approved by the City for use by the Contractor.

#### Contaminated Materials:

Materials which, by virtue of their not meeting the recyclable material preparation standards, are not marketable and cannot be easily made marketable by the Contractor.

Contractor:

Person or persons authorized by the City to perform recycling and composting collection services within the City of Overland Park.

Drop-off Container:

A recycling roll-off container of a number, type and size substantially similar to that described in Contractor's proposal, as approved by the City.

Missed Collection:

A missed collection is defined as a failure of the Contractor to provide recyclable or compostable materials collection service to a residential property within the recycling route during collection hours on the day scheduled for route collection.

Multi-family Residential Property:

All attached and detached multiple dwelling units within the City that do not have individual solid waste collection service.

Processing and Marketing:

Contractor preparation, sale and delivery of recyclables to buyers.

Recyclable Materials:

Means; newspapers; magazines; junk mail; office paper; phone books; ~~green, brown, and clear glass food and beverage containers~~; aluminum and steel cans; #1 PETE and #2 HPDE plastic containers with a neck; corrugated cardboard, carrier stock and chipboard, and other materials mutually agreed to by the Contractor and City. These materials are rendered recyclable by the action of residents who prepare and place materials at the curbside for collection or at a drop off container.

Recyclable Material Preparation:

Recyclable material and modes of their preparation are as follows:

1. ~~Clear, green and brown glass containers: Unbroken glass containers shall be rinsed to avoid health and nuisance problems. Metal or plastic lids, caps and rings should be removed.~~ Corrugated cardboard, carrier stock and chipboard containers:

Dry, nonsoiled containers shall be broken down flat to facilitate collection. Product bags shall be removed. Staples and tape are acceptable.

2. Steel and aluminum Cans: Cans should be rinsed to avoid health and nuisance problems. Aluminum cans should be flattened when possible.
3. Plastic Containers: Plastic containers shall include PETE containers and specified HDPE containers, and such other plastics as are mutually agreed upon between the parties. Containers shall be rinsed to avoid health and nuisance problems. Plastic containers should be flattened with metal or plastic caps and rings removed.
4. Newsprint: Clean, dry, unsoiled newsprint shall be separated from aluminum, glass and plastic materials.
5. Modification of Preparation Standards: The City shall retain the authority to modify the standards for material preparation administratively, after consultation with the Contractor, and the City shall provide the Contractor with written notice of any change in these standards in writing.

Recycling Routes:

Those areas designated for curbside pickup of recyclable and compostable materials. Each route has a specified day of the week upon which the Contractor is allowed recyclable material pickup within the boundaries of the area.

Residential Property:

All attached and detached single and multiple dwelling units within the City that have individual solid waste collection service.

Resident:

Occupant of a residential property.

Subcontractor:

Person or persons who are performing any part of the scope of work other than the Contractor.

1.2 Scope of Work of Contractor

- 1.2.1 Provide weekly curbside collection of recyclable materials from all City residential property as defined in Section 1.1. Until April 28, 2003, the Contractor shall continue to collect green, brown and clear glass food and beverage containers. Effective April 28, 2003, glass collection shall be discontinued and

corrugated cardboard, carrier stock and chipboard shall replace glass as a recyclable material under this contract. Collection of glass until that date shall proceed under the previous terms of the 2002 Recycling Agreement.

- 1.2.2 Purchase and distribute to all new program participants a recycling container agreed to by the City.
- 1.2.3 Process and market all collected recyclable materials.
- 1.2.4 Provide funding as specified in Section 1.5 for a publicity program to insure that all residents are aware of program and its intent.
- 1.2.5 Prepare and submit monthly, quarterly, and annual reports detailing operations, materials collected, an estimate of the volume of material land filled due to contamination or non-acceptability, and marketing of collected material.
- 1.2.6 Provide containers for up to five drop-off recycling centers at locations designated by the City, under the conditions specified in this Contract.
- 1.2.7 Provide for the collection, processing and disposal of compostable materials as specified in this agreement.
- 1.2.8 Provide for the multi-family pilot project as specified in 1.3.12

1.3 Collection Requirements

- 1.3.1 Weekly collection on the same day as scheduled refuse collection, to the greatest extent possible, with schedule to be approved by City staff.
- 1.3.2 All recyclable material shall be collected at one time in a container as described in Section 1.1. Contractor shall notify residents on their collection day of failure to collect the residents material due to contamination. Collection of compostable material shall be specified in Section 2.2.
- 1.3.3 The Contractor shall purchase enough containers to service the City. The containers should be made with the greatest amount of recycled plastic resin feasible so as to insure container integrity and color consistency as required by the City. The containers shall remain the property of the Contractor during the term of this Contract. The Contractor may emboss on the container the words "property of Deffenbaugh Industries, Inc." or their substantial equivalent. The containers shall be of colors and contain graphics approved in writing by the City before distribution. The City shall also approve the type and size of the embossing to insure it will not detract from the recycling project graphics.
- 1.3.4 Work to be performed under the prior agreement between the parties and under this Agreement shall be continuous and without interruption.

- 1.3.5 Any residential property that enters the program shall also receive such a container. The Contractor, without expense to the City, within twenty-four (24) hours after notice, shall replace containers lost or damaged. If the damage or loss of the container is the fault of the Contractor, the Contractor shall replace the missing or damaged container at its own expense. If the loss or damage is not the fault of the Contractor, the Contractor may charge the resident for a replacement container. The price per additional container shall be agreed upon by the Contractor and the City, and any subsequent modification must be in writing.
- 1.3.6 With respect to the drop-off sites, the Contractor shall provide these at the designated locations, with the time, place, duration and manner of such placement, removal and operation to be as designated by the City. This shall include, without being limited to, placing certain drop-off sites at a designated location for a project by a civic non-profit group who may staff the site; in this circumstance, the Contractor shall weigh the recyclable materials so collected in a method to be agreed to between the city and the contractor and compensate the designated civic group with 85% of the gross revenues produced by the sale of those materials. This compensation shall only apply where the container is utilized in such a manner that personnel of the group are present to assist in the collection and storage of the recyclable materials. The City shall have a procedure for approval of such projects and notification of the Contractor.
- 1.3.7 When, as determined by the City, weather conditions prevent collection of recyclables or compostable material on the scheduled day, the Contractor shall collect on the next business day. The City may require the Contractor to make special collections within 24 hours after oral notice is given if Contractor fails to make collections for any other reason, without prior approval of the City.
- 1.3.8 Collection vehicles shall be painted in a color or colors subject to approval by the City, and shall have painted letters and numbers in a contrasting color, at least four inches high, on each side of the vehicle. The number of each vehicle shall also appear on each side and the rear of the vehicle. No advertising, except approved program promotion, other than the name of the Contractor shall be permitted on the vehicles. The City may require reasonable signage on all vehicles identifying that vehicle as participating in the City recycling program, and such signage shall be of a form, content and location as approved by the City. All vehicles shall be kept in a clean and sanitary condition. The City has the right to require the Contractor to clean any vehicle. All vehicles, facilities, equipment and property identified in the Contractor's inventory for use in the performance of this contract shall be available for use in collecting recyclables and compostable material in the City for the duration of the contract. This section also applies to any and all replacement and substitute equipment.
- 1.3.9 Collection will not be made on the following holidays: New Year's Day, Martin Luther King's birthday, Memorial Day, Fourth of July, Labor Day, Thanksgiving

Day and Christmas Day. Collection that would normally occur on such holidays shall be rescheduled on the next working day. All collections after the holiday within that same week shall be delayed by one working day. Contractor shall notify customers of scheduled holidays.

- 1.3.10 In case of a missed pick-up reported by the City or a resident, Contractor shall collect the recyclable materials from such resident within one business day from notification. A recorded message left on a telephone answering device after business hours shall be considered to have been received at the start of business the following day. All calls relating to missed pick-ups shall be logged by the Contractor and that log shall be provided by the Contractor to the City, monthly or on demand.
- 1.3.11 The contractor shall be required to return the recycling container to the specified area-of collection in an inverted position following collection; provided, however, if the contractor has properly placed or allowed materials to remain in the container, such as materials placed in the container by the resident that are not suitable for collection, or publicity materials, then the container shall remain in the upright position. The City may do a survey of a minimum of 50 participating residences immediately following collection to determine the contractor's compliance with these container replacement requirements. This survey shall be done with a video camera or other substantially reliable and verifiable method of inspection. If the first such survey indicates that more than 20% of the containers inspected are in violation of any of the requirements set forth herein, then the contractor shall pay to the City, within two weeks of the mailing or delivery of written notice to that effect, the sum of \$100 to the City. For each subsequent survey violation, the penalty amount shall be increased by \$100; provided, however, that the total amount of the penalty for each subsequent violation shall not accrue to greater than \$500.
- 1.3.12 The Contractor shall expend its best efforts to establish multi-family recycling collection services upon the request of the manager or owner of the multi-family property.

#### 1.4 Transportation and Marketing of Recyclables

The Contractor shall establish transportation and marketing arrangements for the recycled materials.

If any recyclable material has a negative market value and the Contractor is unable to dispose of that material, despite its best efforts, without having to pay a service or disposal charge, the Contractor shall promptly notify the City in writing of that occurrence and provide the City with full documentation and verification of this occurrence. Upon such occurrence the Contractor may request a waiver from the City allowing disposal of that material in an approved landfill and may also request suspension or removal of that material from the list of recyclable materials. The City may

approve, modify or deny, in its discretion, such a request. Any consent of the City must be in writing, and any disposal of collected recyclable materials, without such prior written consent of the City, in a landfill or in any manner inconsistent with the Contractor's approved material processing and marketing plan may, in the discretion of the City, be grounds for termination of this Contract. If the City should deny the request, the Contractor shall be required to pay the necessary service or disposal charges for the subject commodity to be accepted for recycling. If the Contractor can demonstrate to the City that said charges are substantially more than the costs of disposing of such commodity as part of its regular solid waste collection and disposal process, and that such increased costs have a material and adverse financial effect on the Contractor 'so as to make continuation of the Agreement unreasonable, then the Contractor may request the City to negotiate early termination of this Agreement.

#### 1.5 Publicity and Education Programs

The contractor is to establish a fund of \$205,000 ~~per~~ for the first calendar year (to help with additional expenses related to change in materials collected), and \$20,000 for the second calendar year, to be used as deemed appropriate by the City in publicizing and educating the public about the City's recycling and composting programs and other related environmental issues. For the calendar years 2001 and 2002 those funds will be paid to the City as follows: \$10,000.00 will be paid within two weeks from the date of mailing of a letter from the City to the Contractor detailing the past years expenses and any funds remaining and which requests from the Contractor payment of the amount of money necessary to bring the fund up to a full, clear and unencumbered balance of \$10,000; \$5,000.00 on the 90th day of the contract; \$5,000.00 on the 180th day of the contract. Uncommitted monies remaining in the fund at the conclusion of the contract year will either be refunded to the Contractor, or used as whole or partial discharge of the Contractor's obligation for publicity and education funding in a subsequent agreement renewal.

#### 1.6 Permits and Licenses

The Contractor will be required to acquire all the necessary operating permits and licenses.

#### 1.7 Reporting Requirements

Contractor shall be required to keep records and submit reports to comply with City reporting requirements. These reports will serve as a means to apprise City staff and the public of the status of recycling activities. Additionally, upon demand, the Contractor shall also be required to provide certified weight receipts, obtained from scales approved by the City for all materials collected and sold by the Contractor. The Contractor will collect recyclable materials within the City and deliver those materials to the processing facility or directly to the vendor. Each collection vehicle shall be weighed after entering the processing facility and the combined total weight of all recyclable materials collected shall be recorded. Further, if any individual recyclable material is brought directly to a

vendor, the weight of such material so delivered shall be recorded. Recyclable materials collected from other jurisdictions shall not be commingled in any collection vehicle without the written permission of the City, and all recyclable materials collected in the City shall either be brought to the processing facility or directly to the vendor. It is not contemplated that the Contractor shall weigh or record the separate weight of individual types of recyclable materials collected in the City, but only the combined weight totals of such materials. It is contemplated that, after being commingled with materials collected from other jurisdictions, the separate total weights of the individual types of recyclable materials removed from the processing facility will be recorded, and that the separate weight of each type of recyclable material sold to vendors, either directly or after removal from the processing facility, will be recorded. Further, similar reports shall be made of the materials collected in the drop-off containers. Reporting requirements include:

### 1.7.1 Monthly Project Reports

Contractor shall submit monthly project reports for the length of the contract period commencing upon final approval of the Contract. These reports will be due by the 20th day of each month. At a minimum, the reports will include:

1. Tonnage summaries of the individual and combined recycled materials collected in the City brought to the processing facility, and separate tonnage summaries of any individual recycled material collected in the City and brought directly to the vendor without going through the processing facility. In addition, total tonnage of all materials, from all jurisdictions served, brought to the processing facility must be provided, upon request, as well as the tonnage summaries of each individual recycled material from all jurisdictions removed from that processing facility. Further, the Contractor must provide, upon request, tonnage summaries of all such materials previously referred to, that are sold.
2. Material market prices.
- ~~3. Resident participation rates in terms of weekly or monthly set out counts with a description of the methods used to determine these rates. The method of determining participation shall be as agreed to between the parties.~~
- ~~4. Description of progress in meeting schedules, including any problems encountered and how they were resolved.~~
- ~~5. An estimate of the volume of material land filled due to contamination or nonacceptability.~~
3. Upon request of the City, resident participation rates, an estimate of the volume of material land filled due to contamination or nonacceptability, and a description of progress in meeting schedules, including any



problems encountered and how they were resolved, shall be included in these monthly reports.

#### 1.7.1.1 Random Sampling of Collected Recycled Materials

In addition to all regular reporting requirements, the City shall have the right to require, once within each quarter, that, as part of a City supervised random sampling, a random sample of the recycled materials collected within the City shall be separately weighed, by the type of material, immediately upon being brought to the processing facility and before being commingled with other materials. The City's Special Projects Coordinator shall directly supervise this sampling and will have full right of access necessary to accomplish this task. The City shall determine the procedures to be followed in conducting this sample weighing in order to insure accuracy and reliability, and the date, time and manner of the random sampling shall be determined by the City.

#### 1.7.2 Quarterly Project Status Report

Contractor shall provide quarterly project status reports due within twenty (20) days of the close of the quarter being reported. At a minimum, the quarterly reports will include:

1. Summary of all program revenues and tonnages provided in the quarterly reports and participation rates.
2. Detailed data to allow analysis of collection efficiencies; and,
3. Discussion of problems and noteworthy experiences in program operation.

#### 1.7.3 Annual Reports

Contractor shall provide a year-end annual report at the end of the contract term. The report will be due within thirty (30) days of the end of the reporting year. At a minimum the report shall include:

1. A collated summary of the detailed revenue information contained in the quarterly reports, and also summarize the participation rates and recovered materials tonnages.
2. A discussion of highlights, problems and measures taken to resolve problems and increase efficiency and household participation.
3. Revised schedule for the succeeding years of operation, if a contract renewal is contemplated, and,

4. Any recommended changes in contract terms.

## 1.8 Contract Management and Management Performance

### 1.8.1 Contractor Responsibility:

The Contractor will be responsible for collection, processing and marketing of collected materials and funding the City's ongoing public awareness and education program as specified in §1.5. Specific responsibilities include:

1. Collection of all recyclable material from the curb from all City residential property, according to schedule.
2. Procurement of all equipment and assumption of all start-up, operating and maintenance costs for collection.
3. Supervision and labor to perform all Contractor collection.
4. Provision of proper safety equipment and insurance for vehicles and workers.
5. Marketing of all collected recyclable materials and reporting market prices.
6. Provide funds as scheduled in Section 1.5 to the City for the education and promotion functions as specified in this Contract:
7. Provide adequate management systems assuring that collection and marketing program can be performed satisfactorily.
8. Provide for the collection, processing and disposal of compostable materials as specified in this contract.
9. Development and implementation of the multifamily pilot program as specified in this contract.

### 1.8.2 City Responsibility

1. Overall project administration and final approval on all Contractor activities.
2. All monitoring and statistical evaluation of the collection and marketing operations with the cooperation of the Contractor.
3. Establishment of a City staff Special Projects Coordinator to act as liaison between Contractor and residents.

4. The City, in its sole discretion, will perform publicity and education activities listed in this Contract. The City will utilize the funds provided pursuant to §1.5 to conduct a publicity and education program designed to increase resident awareness and — participation in the recycling and composting programs.

### 1.8.3 Billing

It shall be the responsibility of the Contractor, in conjunction with the City, to maintain a billing system for all households covered by this Agreement. The City will expend its best efforts to assist Contractor in maintaining billing information on the households to be served, but substantial responsibility for that function remains with the Contractor, and the failure of the Contractor to have a complete billing list shall not excuse any delay in the implementation of services to be provided under this Agreement. The City will provide the Contractor, upon request, with a list of all residence addresses covered by this Agreement. With respect to the names of the persons residing at such addresses, the City will provide whatever additional information that it has in its records or has legal access to in the county computer records. The City will also refer all persons inquiring of the City about recycling or composting services to the Contractor. The City will make a good faith effort to provide the Contractor with all the information that it possesses or has direct access to that will assist the Contractor in maintaining a billing list; provided, however, that the City is not required to share in the payment of any out of pocket expenses incurred by the Contractor. Computer records of the names and addresses of Contractor's customers provided services under this Agreement shall be jointly owned by the Contractor and the City, and each may make any lawful use of such records not prohibited by this Agreement. Neither party may sell that list to direct mail advertisers. It is contemplated that the physical possession of these records will be with the Contractor for use in his daily business activities, and the Contractor agrees, upon reasonable notice and payment of the actual costs of copying only, to provide copies of those records to the City in whatever form the Contractor keeps them. The Contractor shall provide recycling pick-up services for all households that have not opted out pursuant to Section 2.3. Recycling collection services may be discontinued to those households who default in payment of their recycling fee to the contractor for a period of 90 days or more. The Contractor shall bill residents on a monthly, quarterly, semi-annual or annual basis and residents will make all payments directly to the Contractor. The City shall make no payments to the Contractor and the Contractor agrees that all compensation for services rendered shall be received from revenues generated by billing of residents. The Contractor's billing and bill collection procedures shall be submitted to the City for approval. Each bill submitted by the Contractor to a participant in the program shall contain a separate line item identifying the cost for participation in the recycling program, and that cost item shall not be included within other service charges without being specifically identified.

#### 1.8.4 Rates

The monthly rate for the first year of this Contract shall be \$1.75 per household for recycling services and \$2.25 per household for curbside composting collection services and \$1.75 per household for recycling services and \$2.25 per household for curbside composting collection services for the second year.

#### 1.8.5 Increases in Contractor's Costs

All wage increases for collectors or any other employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively, except as specifically noted herein.

### 1.9 Complaints

The Contractor will be responsible for handling all service complaints. The Contractor must maintain a phone number for registering of complaints that will be prominently displayed on printed material distributed to residents and on a sticker attached to each container. The Contractor shall have personnel to answer the phone from 8:00 A.M. to 4:30 P.M. of each day in which any recycling collection activities take place, and must have an answer phone with capacity to receive messages at all other times. The City may designate certain personnel to handle recycling complaints and inquiries that are received directly by the City, and the Contractor may seek the assistance of such personnel in resolving certain problems that may occur, but the ultimate responsibility for resolving customer complaints lies with the Contractor. All complaints or service calls shall receive prompt and courteous attention.

#### 1.9.1 Curbside Collection

The collection point for containers with recyclable materials shall be an area in front of the residence being serviced within one (1) to four (4) feet off the street curb or edge of pavement where the bin is easily visible from the street. The services to be rendered by the Contractor hereunder shall be performed in an orderly, efficient and workmanlike manner. The Contractor shall not litter premises in the process of making collections, nor allow any recyclable materials to blow or fall from any vehicle used for collections. The recycling container shall, after emptying, be placed in an inverted position within the defined collection point and not blocking any driveway.

##### 1.9.1.1 Physically Challenged Residents

The Contractor, with the assistance of the City, shall establish a procedure for certification of residents who desire to participate in the recycling program but are physically unable, due to aging or a physical condition, to move the recycling container from the building line to the curb for pick-up. After documentation and verification of such condition, and that there is no other household resident able to perform such a task, the City, after certification of need, will notify the Contractor, who will then be responsible for picking up and relocating the container at the building line rather than the curb.

### 1.9.2 Conduct

The Contractor shall furnish neat, courteous and competent employees and shall prohibit the use of illegal drugs or drinking of alcoholic beverages by its drivers and crew members while in the performance of this Contract, and shall prohibit the operation of any vehicle by any impaired person.

## 2.0 Special Provisions

### 2.1 Contract Term

The term of this Agreement shall be from January 1, 200~~13~~ through and including December 31, 200~~25~~.

### 2.2 Compostable Material Collection

The provisions of this Agreement pertaining to reporting, including, without limitation, Sections 1.7, 1.7.1., 1.7.2., and 1.7.3. shall also apply to compostable material. The Contractor shall locate the composting site at the Johnson County Landfill. That location may be changed with the consent of the City. All composting, landfill, or processing areas utilized by the Contractor for the processing and disposal of compostable material picked up in the City as part of the compostables collection program shall, at all times, comply with all applicable federal, state and local laws, rules and regulations.

All residents participating in the composting program shall use biodegradable kraft paper or plastic bags. As a means of identifying the authorized participants, each such bag placed out for collection shall have attached to it a sufficient number of identifying markers to clearly identify the materials to be collected as part of the compost program. The Contractor will use standard packer/loader trucks to pick up the compostable material and transport it to the composting site. Collection will be on a regular and recurring date as specified by the Contractor, and, to the extent possible, on the day of either regular garbage or recycling pick up.

The customer must place all compostable material at the curbside for pick up by the Contractor. Nothing may be placed in the bag except for compostable material, and the Contractor may refuse to pick up any bag containing improper material or substances. Tree limbs are to be bundled and tied as specified in the applicable city code, or may be placed in a bag, but at all times must meet the maximum size specifications. The Contractor will charge a service fee of \$2.25 per month, and may bill as specified in the Agreement.

With respect to the minor operational details of the composting program, such as type of bag used, means of identification, type of truck, etc., the Contractor shall have substantial flexibility to alter or modify such specifics of the program without requiring an amendment to the Agreement; provided, however, that prior notification of such changes must be made in writing to the City's Representative at least ten days before implementing such changes, and if written objection to such changes is made by the City Representative within that ten day period, such changes must be approved by the Community Development Committee.

### 2.3 Opt-Out Provisions

All opt-outs received pursuant to the terms of the prior Agreement between the parties shall remain in effect for the term of this contract, pursuant to the terms of that Agreement, unless those households agree to participate in the program. To the extent necessary to implement this provision, the terms and conditions of prior Section 2.3 shall remain in effect.

### 2.4 Insurance

2.4.1 General: The Contractor shall secure and maintain, throughout the duration of this Contract, insurance of such types and in at least such amounts as are required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the certificate.

2.4.2 Notice of Claim: The Contractor, upon receipt of notice of any claim in connection with the Contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate in excess of \$10,000.00, whether or not such impairment came about as a result of this Contract. In the event, after notice of loss, the City shall determine that the Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Contractor shall, upon notice from the City, promptly reinstate the original limits of liability required here under and shall furnish evidence thereof to the City on the pre-described form.





Limits of liability protection required are the same as the limits for the General Liability section.

2.4.6 Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

1. Is licensed to do business in the State of Kansas.
2. Carries a Best's policyholder rating of A or better; and
3. Carries at least a Class X financial rating.
4. Is a company mutually agreed upon by the City and Contractor.

2.4.7 Subcontractors' Insurance: If a part of the Contract is to be sublet, the Contractor shall either:

1. Cover all subcontractors in his/her insurance policies, or
2. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

## 2.5 Indemnification Agreement

Contractor shall indemnify and save harmless the City and their officers and employees from any and all liability, losses or damages, including attorney's fees and costs of defense, the City may suffer as a result of claims, demands, suits, actions or proceedings of any kind or nature, including worker's compensation claims, in any way resulting from or arising out of the operations of Contractor under this Contract, including operations of subcontractors; and Contractor shall, at his own expense, appear, defend and pay all charges or attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and, if any judgments shall be rendered against the City in any such act, Contractor shall, at his own expense, satisfy and discharge same. Contractor expressly understands and agrees that any performance bond or insurance protection required by the Contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City as herein provided. In the event of any conflict between the language of the insurance policy(s) and the above-recited indemnity agreement, the indemnity agreement shall govern.

### 2.5.1 Performance Bond

Within ten (10) days of the execution of this Agreement, the Contractor shall furnish a surety bond in the penal sum of One Hundred Thousand Dollars (\$100,000.00), conditioned on the faithful performance by the Contractor of its

obligations under this Contract and on its full compliance with the laws of the State of Kansas and the ordinances and regulations of the City, and said bond shall indemnify the City and residents served by this Contract against any loss resulting from any breach or failure of performance by the Contractor. The surety on this bond must meet the requirements of section 2.4.7 of this Contract. The bond shall be for the contract period and must remain in effect throughout the life of this Contract. A similar bond shall be executed with the Addendum, in an amount to reflect the approximate fee collections for a one year period of the composting addendum. The performance bond shall be in the following form:

CITY OF OVERLAND PARK, KANSAS  
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as the "Contractor", and \_\_\_\_\_ a corporation organized under the laws of the State of \_\_\_\_\_, and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the City of Overland Park, Kansas, hereinafter referred to as "City", in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United State of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the \_\_\_\_ day of \_\_\_\_\_, 20-, executed a written Contract with the aforesaid City for the provision of recycling services as specifically designated, defined and described in the Contract and the Conditions thereof;

NOW, THEREFORE, if said Contractor shall in all particulars and faithfully perform each and every covenant, condition, and part of the Contract, according to the true intent and meaning in each case, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect.

Whenever Contractor is declared by City to be in default under the Contract, the City having performed City's obligations thereunder, the surety may promptly remedy the default or shall within thirty (30) days from the date of notice from the City:

1. Commence completing the Contract in accordance with its terms and conditions; or

2. Commence the process of obtaining a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion of any contract work for which the Contractor has received payment in advance and has not satisfactorily completed, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. This bond shall insure that all contract work for which the Contractor has billed and received payment in advance, as well as all labor, equipment and supplies, transportation, transfer or disposal fees or other expenses necessary to complete such work, shall be completed without any additional expense or cost to the City or the residents served by the Contractor pursuant to the terms of this Contract, as well as and that the Contractor will be responsible for all claims for injuries to persons or damages to property or premises arising out of or in connection with his operations under this Contract, and that he will promptly make payments to all persons supplying him or them with labor or materials in the prosecution of the work provided for in the Contract; and shall guarantee to indemnify and safe the City and its officers and employees harmless from all costs, damages, and expenses arising out of or by reason of the Contractor's failure to comply and perform the work and complete the Contract in accordance with the specifications. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said surety has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do at

\_\_\_\_\_, on this, the \_\_\_\_\_ day of \_\_\_\_\_, 20--

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

(Seal).

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Surety Company

\_\_\_\_\_  
Title

By \_\_\_\_\_  
Attorney-In-Fact

By \_\_\_\_\_  
Kansas Agent

Accompany this bond with Attorney-In-Fact's authority from the surety company certified to include the date of the bond.

2.6 Non-Discrimination and Affirmative Action

- 2.6.1 The Contractor shall be an equal opportunity employer as defined by Section 2000 (e) of Chapter 21, Title 42, of the United States Annotated.
- 2.6.2 The Contractor shall observe the provisions of the Kansas Act against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, physical handicap, national origin or ancestry unrelated to such person's ability to engage in the particular work.
- 2.6.3 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or a similar phrase to be approved by the Kansas Commission on Civil Rights.
- 2.6.4 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1030 as amended, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency.
- 2.6.5 If the Contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be canceled, terminated, or suspended in whole or in part, by the contracting agency. The Contractor shall include the provisions of paragraphs (2.4.1) through (2.4.5) inclusively of this subsection in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

2.7 Sexual Harassment

2.7.1. Harassment on the basis of sex is a violation of Sec. 703 of Title VII of the Civil Rights Act of 1964. Any such proven harassment of employees or of other persons shall be deemed a breach of the present contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency.

2.7.2. Applying general Title VII principles, the Contractor is responsible for the acts of its agents, employees, and subcontractors with respect to sexual harassment regardless of whether the specific acts complained of were authorized or were forbidden by the Contractor and regardless of whether the Contractor knew or should have known of their occurrence.

## 2.8 City's Representative

The City's representative for the purpose of this Contract shall be Jim Twigg, Special Projects Coordinator, or such other person designated in writing by the City Manager.

## 2.9 Contractor's Representative

The Contractor's representative shall be Mike Clagett or such other person designated in writing by an authorized officer of the Contractor.

## 3.0 Ownership of Recycled and Compostable Materials

The Contractor shall have full ownership rights of all recyclable and compostable material placed at the curbside for collection by Contractor under this Agreement and the City agrees to take such action as may be reasonably necessary to protect Contractor's ownership interest.

## 3.1 Independent Contractor

Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Contractor shall have exclusive control of, and the exclusive right to control the details of the services and work performed hereunder in accordance with the terms of this Agreement, and all persons performing the same and nothing herein shall be construed as creating a partnership or joint venture between City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of City, and no such person shall be entitled to any benefits available or granted to employees of City.

## 3.2 Non-Assignment

Neither Contractor nor City shall subcontract, assign, transfer, convey, or otherwise hypothecate this Agreement or their rights, duties or obligations hereunder or any part thereof without the prior written consent of the other.

### 3.3 Compliance with Laws and Regulations

Contractor agrees that, in the operation of the Processing Center or the composting site, and the performance of all work and services under this Agreement and the Addendum, Contractor will qualify under and comply with any and all-federal, state and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described therein. The federal laws and regulations covered herein shall include, without being limited to, the Americans with Disability Act.

### 3.4 Accident Notification

In the event of accidents of any kind which involve the general public and/or private or public property, the Contractor shall immediately notify the City and shall provide a full accounting of all details of the accident. Contractor shall furnish the City with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties.

### 3.5 Termination

- (a) In the event Contractor materially defaults in the performance of any of the material covenants or agreements to be kept, done or performed by it under the terms of this Agreement, City shall notify Contractor in writing of the nature of such default. Within fifteen (15) days following such notice:
  - 1. Contractor shall correct the default; or
  - 2. In the event of a default not capable of being corrected within fifteen (15) days, Contractor shall commence correcting the default within fifteen (15) days of City's notification thereof, and thereafter correct the default within thirty (30) days.
- (b) If Contractor fails to correct the default as provided above, City, without further notice, shall have all of the following rights and remedies which City may exercise singly or in combination:
  - 1. The right to declare that this Agreement together with all rights granted Contractor hereunder are terminated, effective upon such date as City shall designate; and
  - 2. The right to license others to perform the services otherwise to be performed by Contractor, or to perform such services itself.
  - 3. Any and all the rights under federal laws and the laws of the State of Kansas.

- (c) In the event that Contractor becomes aware of any condition which may result in Contractor's default or breach of any material terms of this Agreement, Contractor shall notify the City within fifteen (15) days of said condition. Failure to so notify the City shall result in termination of the Agreement at the City's option.

3.6 Notices

All notices required or contemplated by this Agreement shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the parties as follows:

To City: Jim Twigg  
Special Projects Coordinator  
City of Overland Park, Kansas  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

To Contractor: Mike Clagett  
Deffenbaugh Industries Inc.  
P. O. Box 3220  
Shawnee, KS 66203

or to such other address as the parties may designate in writing.

3.7 Contractor's Records

Contractor shall maintain its books and records related to the performance of this Agreement in accordance with the following minimum requirements:

- (a) Contractor shall maintain any and all ledgers, books of account, invoices, vouchers and canceled checks, as well as all other records or documents evidencing or relating to charges for services, to information provided in the required reports or reasonably relevant to the Contractor's performance of this Agreement or the review of Contractor's operations required by this Agreement, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement.
- (b) Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- (c) Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time, with reasonable notice, during regular business hours, upon written request by City representative. The records shall be available to City representative at Contractor's address indicated for receipt of notices in this Agreement.

3.8 Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

3.9 Law to Govern

This Agreement is entered into and is to be performed in the State of Kansas. City and Contractor agree that the laws of the State of Kansas shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

4.0 Titles of Sections

Section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties.

4.1 Amendment

This Agreement may be modified or amended only by written agreement duly executed by the parties hereto or their representatives.

4.2 Severability

The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated.

4.3 Entirety

This Agreement and any Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the parties hereto have set their hands as of this \_\_\_\_\_ day of \_\_\_\_\_, 2000~~2~~

CITY OF OVERLAND PARK, KANSAS,  
a Municipal Corporation



\_\_\_\_\_  
Ed Eilert, Mayor

ATTEST:

By: \_\_\_\_\_  
Marian Cook  
City Clerk

DEFFENBAUGH INDUSTRIES, INC.

By \_\_\_\_\_  
Ronald D. Deffenbaugh  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Bart Budetti  
Senior Assistant City Attorney