

**BULK CURBSIDE LEAF COLLECTION PROGRAM DISPOSAL AGREEMENT
BETWEEN CITY OF NAPERVILLE AND BIOAG, INC.**

THIS AGREEMENT is entered into this 16th day of March, 2016, between the City of Naperville ("City"), an Illinois municipal corporation and home rule unit of government, with offices located at 400 South Eagle Street, Naperville, Illinois 60540, and BIOAG, INC. ("Contractor"), an Illinois corporation located at 28W753 Davidson Road, Naperville, Illinois 60564 for disposal of leaves collected by the City via the City's bulk curbside leaf collection program ("Agreement").

RECITALS

WHEREAS, in addition to the City's bagged leaf collection program that allows residents to dispose of bagged landscape waste weekly, the City Council has determined that it is in the public interest to offer residents with an alternative way to dispose of leaves via a bulk curbside leaf collection program where the City collects leaves that have been deposited on the street next to the curb in front of residences three times per year, between approximately late October and early December, weather permitting; and

WHEREAS, the City's bulk curbside leaf collection program is not administered by the City's contracted waste hauler, but rather is primarily administered by the City's Department of Public Works which is responsible for the curbside pickup and disposal of leaves collected via the City's bulk curbside leaf collection program; and

WHEREAS, the City annually collects between approximately 42,000 and 52,000 cubic yards of leaves through its bulk curbside leaf collection program; and

WHEREAS, the City may with the approval of the City Council, enter into contracts for leaf disposal per 65 ILCS 5/11-19-1 and 4-2-3:2.1, Naperville Municipal Code; and

WHEREAS, the City's current bulk curbside leaf collection program disposal agreement expires on April 30, 2016; and

municipal boundary of the City reserved exclusively for disposal of leaves the Contractor receives from the City. City owned property may not be used to satisfy the two hundred (200) acres of agricultural land requirement. The Contractor shall provide the City with the addresses and available acreage of all locations where the City may deliver leaves for disposal. All provided locations shall be available and able to accept large quantities of leaves delivered by the City Monday through Saturday from 6:30 A.M. until 5:00 P.M., in any weather condition. Leaves delivered by the City to agricultural land designated by the Contractor shall immediately become the property and responsibility of the Contractor. The Contractor shall be solely responsible for spreading, tilling or otherwise appropriately disposing of delivered leaves. The Contractor shall solely responsible for all aspect of disposal of the leaves including but not limited to the provision of material and labor, equipment, fuel, power, machinery, tools, disease-treatment materials, seed, inoculation, fertilizers, licensing and permitting. The Contractor shall appropriately maintain all property where City leaves are delivered.

3. **Regulatory Compliance.** The Contractor shall at all times conduct its leaf disposal services in strict compliance with all federal, state and local laws, ordinances, or rules and regulations, and shall immediately notify the City of any notice of violation received for a site to which residential leaf matter collected in the City has been taken for disposal or processing. Any notice of violation may be considered by the City to be failure to conform to the Agreement and shall be cause for immediate termination of this Amendment.
4. **Defense and Indemnification.** The Contractor shall defend, indemnify, and hold harmless the City, and its officers, agents, employees, and representatives for any injury or damage to person or property, including but not limited to any liability, losses or damages, including court costs and attorney fees, resulting or arising out of the Contractor or its officers, agents, employees, representatives, family or subcontractors' disposal of leaves delivered to it by the City. Such indemnification shall not be limited by reason of any insurance coverage provided by the Contractor. Such indemnification shall not apply to liability resulting solely from the City's own actions. This provision shall survive the expiration or termination of this Agreement.
5. **Consideration.** In consideration of the promises and provisions herein, the City shall pay the Contractor four dollars (\$4.00) per cubic yard of leaves delivered by the City to the Contractor

Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Lessee, its employees, agents and subcontractors.

9. **Termination.** This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor at the address provided in the Notice Section herein.
10. **No Waiver.** Failure of either Party hereto to insist upon strict and punctual performance of any terms or conditions of this Agreement shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance.
11. **No Assignment or Subcontract Without Consent.** The Contractor shall not assign nor subcontract any of its responsibilities under this Agreement without the written consent of the City.
12. **Notices.** Any notice provided for herein shall be sent to the following:

For the Contractor:	Benjamin Drendel, President of BIOAG, INC. 28W753 Davidson Road, Naperville, Illinois 60564
For the City:	City of Naperville Department of Public Works ATTN: Director of the Department of Public Works 180 Fort Hill Drive, Naperville, IL 60540
13. **Binding Effect.** This Agreement shall extend to and be binding upon the heirs, executors and administrators of the Parties to this lease.
14. **Amendment.** This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the Parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
15. **Severability.** If any part of this Agreement is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect and be enforced to the greatest extent permitted by law.

