

**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

WHEREAS, leaves collected by the City via the City's bulk curbside leaf collection program must be disposed of in an environmentally appropriate way pursuant to Illinois Environmental Protection Agency ("IEPA") regulations; and

WHEREAS, the use of nearby local farm land to dispose of leaves collected by the City via the City's bulk curbside leaf collection program is crucial to minimizing the City costs by reducing time and costs to transport collected leaves for disposal; and

WHEREAS, nearby local farm land has become increasingly sparse making it increasingly costly and inefficient to transport and dispose of the leaves on farm land located at significant distances; and

WHEREAS, per the Sole Source Procurement Section, 1-9B-4:5, of the City's Procurement Code the City's Chief Procurement Officer has conducted a good faith review of available sources for disposal of leaves collected by the City via the City's bulk curbside leaf collection program, including the publication of notice of intent to sole source this Agreement to the Contractor which did not receive any protests in response, and determined that there is only one source for disposal of leaves collected by the City via the City's bulk curbside leaf collection program; and

WHEREAS, it is in the best interests of the City to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and undertakings herein contain, the sufficiency of which is mutually acknowledged, the City and the Contractor (hereinafter jointly referred to as "**Parties**") agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated in this Section as though fully set forth.
2. **Disposal Service.** The Contractor agrees to receive and appropriately dispose of any and all leaves delivered to it by the City throughout the Term of this Agreement. The Contractor shall be capable of appropriately disposing of no less than fifty two thousand (52,000) cubic yards of leaves delivered to it by the City between October 15 and December 1. The Contractor shall maintain no less than two hundred (200) acres of agricultural land within five (5) miles of the

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

for disposal. Upon the City's delivery of leaves to the Contractor's designated premises, the City shall record and inform the Contractor of the number of cubic yards of leaves being delivered for disposal. The Contractor shall provide the City with an invoice specifying: (1) the number of cubic yards of leaves delivered the Contractor by the City for disposal; (2) the address where said leaves were delivered, and (3) the date when said leaves were delivered. Invoices submitted shall be paid in accordance with applicable City policy. The Parties shall make a good faith effort to amicably resolve any discrepancies concerning the number of cubic yards of leaves delivered by the City to the Contractor, however, in the event that a discrepancy cannot be amicably resolved, the City's record of the number of cubic yards of leaves it delivered to Contractor shall be controlling and dispositive to resolve any discrepancy.

6. **Term.** The Term of this Agreement shall begin on May 1, 2016 and end on April 30, 2018.
7. **Extension Option.** This City has three (3), one (1) year extension options whereby the City may choose to extend this Agreement for one (1) year up to three (3) times, subject to the same terms and conditions set forth herein, except that upon showing of good cause and upon the agreement of the Parties, the Contractor may require no more than a five percent (5.00%) annual increase in the price per cubic yard consideration. The City may exercise its option upon written notice to the Contractor at the address provided in the Notice Section herein, no less than thirty (30) days prior to the expiration of the Agreement.
8. **Insurance.** The Lessee shall maintain a Commercial General Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; Automobile Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; and Workers' Compensation insurance in accord with the laws of the State of Illinois. The Lessee shall name the City as an additional insured on all applicable policies and tender to the City the original and updated endorsements and certificates of insurance reflecting the same. For any claims related to the performance of the Lessee's work, Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. The Lessee's Workers'

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.

16. **Venue.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

17. **Authority.** Pursuant to authorization provided by the Naperville City Council, Douglas A. Krieger, City Manager for the City of Naperville warrants and represents that he is authorized to execute this Agreement on behalf of the City. Benjamin Drendel, President of Drendel Farms, Inc., warrants and represents that he is are authorized to execute this Agreement on behalf of the Contractor.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date set forth on page one, and by their signatures hereto acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

FOR THE CONTRACTOR, BIOAG, INC.:

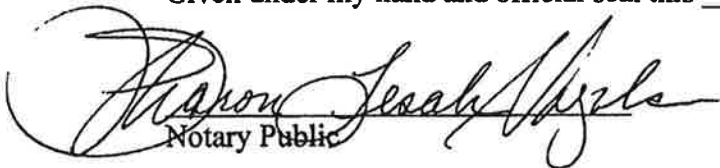
By:


Benjamin Drendel, President of BIOAG, INC.

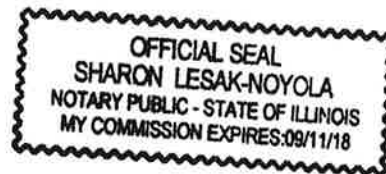
State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Benjamin Drendel**, appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this 7 day of March 2016.


Notary Public

(seal)



FOR THE CITY OF NAPERVILLE:

