

AGREEMENT

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **LAMBLAND, INC.**, doing business as **A-1 ORGANICS**, a Colorado corporation, with its principal place of business located at/ doing business at 16350 WCR 76, Eaton, Colorado 80615 (the “Contractor”), jointly “the parties”.

The parties agree as follows:

1. COORDINATION AND LIAISON: Contractor shall fully coordinate all services under the Agreement with the Executive Director of Public Works, (“Executive Director”) or, the Executive Director’s Designee. For the purposes of day-to-day administration, the Director of Solid Waste Management is the Executive Director’s designee.

2. SERVICES TO BE PERFORMED:

(a) Contractor shall furnish facilities at which the City may deliver materials it collects from Denver’s Compost Collection Program, Denver’s LeafDrop Program, and organic drop-off facilities (collectively “Materials”), and shall accept delivery of the Materials. Contractor shall provide or act as a compost processing outlet for the City throughout the term of the Agreement, regardless of market fluctuations for compost. Contractor shall not landfill, burn, or convert for burning any Mixed Organic Materials (as defined in Exhibit A), leaves from the LeafDrop Program, or the resulting finished compost.

(b) If Contractor is unable to process the Materials due to accidents, machine breakdowns, fire or other incidents, it shall find alternate processing locations and transport the Materials.

(c) As the Executive Director directs, Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Scope of Services**, to the City’s satisfaction.

(d) Contractor shall operate and maintain its facilities in full compliance with all applicable laws, rules, regulations of the United States and the State of Colorado, all applicable local ordinances, rules, and regulations, and with the laws, rules, and regulations of any other public entity having lawful jurisdiction over any of Contractor’s facilities.

(e) Contractor is ready, willing, and able to undertake the obligations set forth in the Agreement.

(f) Contractor shall faithfully perform its obligations in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing obligations of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

(g) The City shall have the reasonable right to observe all Contractor operations

related to the Agreement. Observations may be by City employees or City representatives.

3. DELIVERY OF MATERIALS; SOURCE OF MATERIALS; NON-ACCEPTABLE MATERIALS; & DISCLAIMER:

(a) **Delivery of Materials:** The City shall deliver the Materials to Contractor's Processing Location or Transfer Location option as outlined in Exhibits A and B.

(b) **Source of Materials:** The sources of the Materials are Denver's Compost Collection program, Denver's LeafDrop programs and yard debris and brush from the City's drop-off facility. The parties understand and agree that:

- (1) The City provides residents participating in the Denver's Compost Collection Program with a large composting cart for collection of yard debris, food waste, and non-recyclable paper for the City to pick-up. These materials, as further identified in **Exhibit A**, are referred to in the Agreement as "Mixed Organic Materials."
- (2) The City seasonally makes available sites for residents to drop off leaves.
- (3) These methods result in collection of and drop off of materials other than Mixed Organic Materials and leaves ("Non-acceptable Materials").
- (4) The City will deliver the Materials from the compost carts to Contractor's facility on the same day that it collects them in an "as picked-up" condition and that the City will not sort, process, bundle, or bale any of the Materials. All processing or other operational costs incurred upon or after delivery of organic materials to the processing location shall be the obligation of the contractor.
- (5) Through the City's public education, training, and audit campaign, it will encourage residents participating in the Denver Compost Collection Programs to only discard of Mixed Organic Materials in the City provided compost carts and encourage them not to allow any Non-acceptable Materials to be comingled with Mixed Organic Materials or leaves dropped off through the LeafDrop program.

(c) **Non-Acceptable Materials:**

- (1) Except as provided for in subsection (c)(2) below, Contractor shall process all loads delivered by the City. Contractor shall handle, transport, and dispose of all Non-acceptable Materials in accordance with the Agreement, including, without limitation, Section 21.
- (2) Should the City deliver a load of Materials that is deemed to be contaminated with Non-Acceptable Materials by more than 10% (by weight) the contractor may choose to clean up the load for composting or dispose of the load. The contractor will be responsible for either option and may bill the City a cost of no more than \$33/ton for either option. The City must be notified in advance,

and must be given the opportunity to inspect the load prior to either option. The City strongly encourages the contractor to clean the load and may choose to support such efforts with City personnel to assist.

(d) DISCLAIMER: NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, EXPRESS OR IMPLIED, THE CITY IS PROVIDING MATERIALS ON AN “AS IS” BASIS, WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION, WARRANTY OR GUARANTEE, INCLUDING, FITNESS, MERCHANTABILITY. EXCEPT FOR THE REMEDY IN SUBSECTION 3(c)(2) ABOVE, THE CITY IS NOT RESPONSIBLE FOR ANY COSTS INCURRED BY CONTRACTOR, INCLUDING THOSE RESULTING FROM OR ARISING OUT OF LOST REVENUES, LOSS OF USE, COSTS OF RECOVERY, COST OF ANY SUBSTITUTE MATERIAL, CLAIMS BY THIRD PARTIES, OR OTHER SIMILAR COSTS.

4. TERM: The Agreement shall commence on February 1, 2019 and will terminate on January 31, 2024 (“Term”). The City in its sole discretion may elect to extend (i.e., renew) the Agreement. Contractor acknowledges the request for proposal giving rise to the Agreement stated that all prices quoted in proposals would be firm and fixed for the specified contract period, including all renewal terms.

5. COMPENSATION AND PAYMENT:

(a) Fee: Contractor shall accept as its sole compensation for all services performed and costs incurred amounts based on Contractor’s monthly invoices; provided however, that the total amount billed by Contractor may not exceed the Maximum Contract Amount and that the amounts billed are based on the rate(s) set forth in **Exhibit B**.

(b) Reimbursable Expenses: There are no reimbursable expenses allowed under the Agreement. All of Contractor’s expenses are contained in the rates in **Exhibit B**.

(c) Invoicing: Contractor shall submit a monthly invoice and monthly report to the City along with all other supporting documentation required by the City. At a minimum, the report must contain: the tons (or proposed alternative measure) of organic materials received by Contractor and delivered by the City; copies of all weigh slips, where possible (a volume/ticket slip minimum); the total invoice amount to be paid by the City; list of deductions and payments and itemization of any adjustments allowed under the Agreement; the name of Contractor's employee who prepared the report; the date of report preparation; miscellaneous notes; and any other information requested by the City. The invoice and report must be in a format and contain level of detail acceptable to the City. All invoicing and supporting documentation must be sent to Recycling Manager, 2000 W. 3rd Ave. 3rd Floor, Denver CO 80223. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under the Agreement.

(d) Maximum Contract Amount:

- (1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.
- (2) The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. STATUS OF CONTRACTOR: Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

7. TERMINATION:

(a) The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Contractor. However, nothing gives Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

(b) Notwithstanding the preceding paragraph, the City may terminate the Agreement if Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

(c) Upon termination of the Agreement, with or without cause, Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

(d) If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in Contractor's possession, custody, or control by whatever method the City deems expedient. Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the

property of the City. Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

8. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

9. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by either party constitute or be construed to be a waiver by such party of any breach of covenant or default that may then exist on the part of the other party. No payment, other action, or inaction by a party when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

10. INSURANCE:

(a) General Conditions: Contractor agrees to secure, at or before the time of execution of the Agreement, the following insurance covering all operations, goods or services provided pursuant to the Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of the Agreement and shall reference the City contract number listed on the signature page of the Agreement. The notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under the Agreement.

(b) Proof of Insurance: Contractor shall provide a copy of the Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under the Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of the Agreement. The City requests that the City's

contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in the Agreement shall not act as a waiver of Contractor's breach of the Agreement or of any of the City's rights or remedies under the Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

(c) **Additional Insureds**: For Commercial General Liability and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(d) **Waiver of Subrogation**: For all coverages required under the Agreement, Contractor's insurer shall waive subrogation rights against the City.

(e) **Subcontractors**: All subcontractors (including independent contractors, suppliers or other entities providing goods or services required by the Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors upon request by the City.

(f) **Workers' Compensation/Employer's Liability Insurance**: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into the Agreement, that none of Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of the Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes the Agreement.

(g) **Commercial General Liability**: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

(h) **Business Automobile Liability**: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under the Agreement.

(j) **Additional Provisions**:

(i) For Commercial General Liability, the policy must provide the following:

(A) That the Agreement is an Insured Contract under the policy;

- (B) Defense costs are outside the limits of liability;
- (C) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
- (D) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City

(ii) For claims-made coverage:

- (A) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
- (B) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

11. DEFENSE AND INDEMNIFICATION:

(a) Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under the Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

(c) Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

(d) Insurance coverage requirements specified in the Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation.

Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) The defense and indemnification obligation shall survive the expiration or termination of the Agreement.

12. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property

13. ASSIGNMENT; SUBCONTRACTING: Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of the Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor or assign.

14. INUREMENT: The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

15. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. NO AUTHORITY TO BIND CITY TO CONTRACTS: Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

17. SEVERABILITY: Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

18. CONFLICT OF INTEREST:

(a) No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, *et seq.* or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

(b) Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Contractor by placing Contractor's own interests, or the interests of any party with whom Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given Contractor written notice describing the conflict.

19. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, at the addresses set forth below. Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

If to the City:

Executive Director of Public Works or Designee
201 West Colfax Avenue, Dept. 608
Denver, Colorado 80202

With a copy of any such notice to:

Department of Public Works
Director, Solid Waste Management Division
2000 W. 3rd Avenue, 3rd Floor
Denver, Colorado 80223

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

If to the Contractor:

A-1 Organics, Inc.
Attn. Travis Bahnsen
16350 WCR 76
Eaton, Colorado 80615

With a copy of such notice to:

Regina T. Drexler, Esq.
1435 Larimer Street
Suite 207
Denver, CO 80207

19. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

(a) The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

(b) Contractor certifies that:

- (1) At the time of its execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

(c) Contractor also agrees and represents that:

- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (2) It shall not enter into a contract with a subcontractor that fails to certify to Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
- (3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement, through participation in either the E-Verify Program.
- (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

(d) Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

20. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in the Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. Contractor shall insert the foregoing provision in all subcontracts.

23. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services and shall operate and maintain its facilities in full compliance with all applicable laws, rules, regulations and codes of the United States and the State of Colorado as well as with the City and County of Denver's Charter, ordinances, rules, regulations and Executive Orders.

24. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its

sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

25. NO CONSTRUCTION AGAINST DRAFTING PARTY: The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

26. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

27. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Contractor and paid for by the City pursuant to the Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. Contractor shall disclose all such items to the City and shall register such items in the name of the City and County of Denver unless the Executive Director directs otherwise in writing. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” Contractor (by the Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity

28. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

29. ADVERTISING AND PUBLIC DISCLOSURE: Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor’s advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

30. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

31. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

32. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

33. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: The parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

34. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

35. FORCE MAJEURE: Contractor shall not be liable to the City for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this agreement to the extent such failure, delay or interruption is due to causes which were not reasonably foreseeable and are beyond the control of Contractor, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which Contractor is not responsible or which is not in its power to control.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201947223-00

Contractor Name: LAMBLAND, INC.

By: *[Signature]*

Name: Travis Bahnsen
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A SCOPE OF WORK

In accordance with and subject to the Agreement, Contractor shall:

1. Accept materials from the City's Solid Waste Management Division's composting collection programs at the designed Processing Location (Rattler Ridge, 12002 WRC 59, Keenesburg, CO 80643) or Transfer Locations (Monaco at 9109 Monaco St., Commerce City, CO 80022, or, Mountain States at 2300 W.Radcliff Ave, Englewood). If dropped off at the Transfer Location, the Contractor will reload it for transfer to its permitted Processing Location. Mixed Organic Material must only be delivered to the Keenesburg/Rattler Ridge site, and not the Transfer Locations.
 - a. Mixed Organic Materials delivered by the City will come from the Solid Waste Management Division's composting collection program and generally consist of the comingled materials below. The list for items for each category is not exhaustive.
 - i. Yard Debris – flowers, grass clippings, houseplants, leaves, plant trimmings, small branches, weeds.
 - ii. Food Scraps – meat and bones, seafood, vegetable scraps, dairy products, processed foods such as baked goods and breads.
 - iii. Non-Recyclable Paper – coffee filters, facial tissues, greasy pizza boxes, paper napkins, non-coated paper plates, paper towels, tea bags, wax paper, BPI-Certified paper coffee cups, paper plates and takeout boxes.
 - b. Source-Separated Leaves are those that are collected separately through the City's annual LeafDrop recycling program each fall. Leaves may be comingled with paper yard bags and pumpkins.
 - c. Source-Separated Yard Debris and Brush such as brush, branches, leaves and miscellaneous residential yard debris that is collected separately through the City's residential recycling drop-off locations.
2. Upon delivery of material, provide the City with a weigh slip upon delivery of material. The weight slip shall contain information regarding each of the loads that is received by the Contractor and must include:
 - a. Truck number
 - b. Date
 - c. Full weight
 - d. Tear weight
 - e. Time weighed on way in and time weighed on way outIf scales are not available, the ticket will indicate total cubic yards of material.
3. Maintain a fully permitted composting site by the Colorado Department of Public Health and Environment (CDPHE).
4. Fully compost the Mixed Organic Materials, Source-Separated Leaves, and Source-Separated Yard Debris and Brush at its permitted composting facility in to a finished compost product that meets the US Composting Council's Seal of Testing Assurance as a soil amendment.

5. Resell a portion of the compost made from the materials delivered from the City's collection programs at the City's annual Mulch Giveaway and Compost Sale event in May. Vendor will provide staff to sell the composted material, offer bulk and bagged compost for sale at a discounted price and return 10% of the revenue collected in credit towards leaf processing fees.
6. Be able to receive loads delivered in transfer trailers at all sites.
7. Provide access to facilities during the times that the City currently collects organic materials, which is Monday through Friday from 7:00 a.m. to 5:00 p.m. The City shall also need the Vendor's site to be accessible during the same hours on Saturdays and/or Sundays when the following events occur:
 - a. A City holiday falls on a weekday prior to the weekend.
 - i. Existing scheduled holidays where the City will request Saturday service after the holiday are: New Year's Day, January 1; Martin Luther King Birthday, third Monday in January; Presidents' Day, third Monday in February; Cesar Chávez Day (third Monday in March); Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day, December 25.
 - b. When a special event or circumstance occurs on or before the weekend
 - i. The City will notify the awarded Vendor no less than forty-eight (48) hours in advance of a Saturday need for a special event or circumstance
 - ii. The City's annual LeafDrop weekend operations are typically done during three (3) weekend each November.
8. Provide invoices that include the following details:
 - a. Invoice number
 - b. Invoice date
 - c. Service date(s) or service period
 - d. PO number
 - e. Contract number
 - f. Itemized charges, including unit of measurement
 - g. Number of tons delivered by the City to the Vendor's site(s)
 - h. Total charge
9. Submit a monthly report with the monthly invoices. The invoices and report shall contain the following:
 - a. Tons (or proposed alternative measure) of Materials received by the Contractor and delivered by the City
 - b. The total invoice amount to be paid by the City
 - c. Any deductions, other payments, or adjustments made by the Contractor allowable under the contract
 - d. Copies or a report of all weigh slips
 - e. The name of the employee who prepared the report
 - f. The date of report preparation

- g. Any other information reasonably requested by the City; and, miscellaneous notes
10. Submit an annual report no later than January 31st of each year. The report should include:
- a. Overall summary
 - b. Documentation of the total tons of Materials delivered
 - c. Information about how the finished compost generated from the City's material was marketed and used
 - d. Other reasonably requested information requested by the City

EXHIBIT B

PRICING / RATE SHEET

City-Delivered Mixed Organic Materials (residential curbside materials that contain yard debris, food waste and non-recyclable paper)

Delivery Location	Pricing (includes all costs)
Processor Location (Rattler Ridge)	\$24.75 / ton
Transfer Location (Monaco or Mountain States)	N / A

City-Delivered Source-Separated Leaves

Delivery Location	Pricing (includes all costs)
Processor Location (Rattler Ridge)	\$10.00 / ton
Transfer Location (Monaco or Mountain States)	\$26.00 / ton

City-Delivered Source-Separated Yard Debris and Brush

Delivery Location	Pricing (includes all costs)
Processor Location (Rattler Ridge)	\$21.00 / ton
Transfer Location (Monaco or Mountain States)	\$26.00 / ton

All pricing/rates on this Exhibit B shall be effective for the first two years of the initial 5-year term of this agreement.

There is opportunity to revise unit pricing once every three hundred and sixty five (365) days during years three, four and five of the awarded contract. If revisions to pricing are requested at these times, requests shall be submitted to the City Agency contact, no less than ninety (90) days prior to the contract anniversary date.

All requested pricing revisions submitted shall be accompanied by a detailed explanation as to the reasoning for the pricing revision request and shall be reviewed by the City. It will be the City's sole discretion as to if this revision is acceptable for negotiation.

Any price revision negotiation shall be required to be mutually agreed upon by both the vendor and the City. A maximum allowable increase shall not exceed five percent (5.00%), unless adverse market conditions are observed.



EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Flood and Peterson PO Box 578 Greeley CO 80632		CONTACT NAME: Morgan Schweizer, CLCS, CISR PHONE (A/C, No, Ext): (970) 266-7138 FAX (A/C, No): (970) 506-6840 E-MAIL ADDRESS: MSchweizer@floodpeterson.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Farmland Mutual Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	
INSURED Lambland, Inc., A1 Organics, Inc. Environmental Equipment Company, LLC 16350 CR 76 Eaton CO 80615			

COVERAGES

CERTIFICATE NUMBER: '18-19

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	Y	CPP125254A	04/26/2018	04/26/2019	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	CPP125254A	04/26/2018	04/26/2019	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			CU125254A	04/26/2018	04/26/2019	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTHER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City and County of Denver, it's elected officials, employees and volunteers are named as Additional Insured with regards to the Commercial General Liability and Business Auto Liability. Waiver of Subrogation applies to General Liability and Business Auto Liability.

CERTIFICATE HOLDER**CANCELLATION**

City & County of Denver 201 W. Colfax Denver CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/10/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Pinnacol Assurance 7501 E. Lowry Blvd. Denver, CO 80230-7006	CONTACT NAME: PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____	
	INSURER(S) AFFORDING COVERAGE	
INSURED Lambland Inc dba A-1 Organics 16350 Wcr 76 Eaton, CO 80615	INSURER A : Pinnacol Assurance NAIC # 41190	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED _____ RETENTION \$ _____						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	4203555	05/01/2018	05/01/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Unless otherwise stated in the policy provisions, coverage in Colorado only.

CERTIFICATE HOLDER**CANCELLATION**1966505
City and County of Denver
201 W Colfax Ave
Denver, CO 80202
Tay.Dunklee@denvergov.org

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

First Choice/Trusted Advisors Ins L

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CERTIFICATE HOLDER COPY

City and County of Denver
201 W Colfax Ave
Denver, CO 80202

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT (CONT)