

Contract Abstract A Matter #: 35979

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Contract Information

Contract & Solicitation Title: **Processing and Composting of Yard Waste**

Contract Summary: **CONTRACTOR agrees to provide, all labor, material, and equipment for the receiving, processing, and composting of all yard waste and vegetative storm debris collected and delivered by or on behalf of METRO as part of routine collection route and major storm events.**

Contract Number: **385153** Solicitation Number: **894497** Requisition Number: **78597**

Type of Contract/PO: **IDIQ Contract**

Contract Start Date: **12/01/2016** Contract Expiration Date: **11/30/2026**

Estimated Contract Life Value: **\$10,000,000.00** Fund: **30501** BU: **42803700**

Selection Method: **RFP**

Procurement Staff: **Terri Troup** BAO Staff: **Bryan Gleason**

Department(s) Served: **Public Works**

Contractor Information

Contracting Firm: **Nature's Best Organics of Tennessee, LLC**

Address 1: **5800 Perkins Place Drive**

Address 2: **Suite 6A**

City: **Baton Rouge** State: **LA** Zip: **70808**

Company Contact: **Blake Brian** Email Address: **bbrian@nbotn.com**

Phone #: **865-7556179** E1#: **253410**

Contract Signatory: **Sid Brian** Email Address: **SBrian@nrri.net**

Subcontractor Information

Small Business Program: **No SBE/SDV participation** Amount: **\$0.00**

Procurement Nondiscrimination Program: **No MWBE Participation** Amount: **\$0.00**

Disadvantaged Business Enterprise: **Was Not applicable for this contract** Amount: **\$0.00**

Summary of Offers

Summary of Offers	Score (RFQ Only)	Cost	Result
Alternative Energy Products LLC	81.81	\$2,968,500.00	Evaluated but not selected
B & B Ranch LLC	70.00	\$2,482,327.16	Evaluated but not selected
Nature's Best Organic	83.75	\$3,571,710.50	Awarded
Queen's Tree Surgery	58.02	\$3,875,669.14	Evaluated but not selected
Red River Ranch	70.55	\$4,505,045.96	Evaluated but not selected
			No Other Offers
			No Other Offers

ASSIGNMENT AMENDMENT NO. 1
TO CONTRACT NO. 385153
BETWEEN
METROPOLITAN GOVERNMENT OF NASHVILLE-DAVIDSON COUNTY
AND
NATURES BEST ORGANICS OF TENNESSEE, LLC

This amendment is entered into, by and between the **METROPOLITAN GOVERNMENT OF NASHVILLE-DAVIDSON COUNTY** and **NATURES BEST ORGANICS OF TENNESSEE, LLC** (hereinafter "Contractor").

WITNESSETH

Whereas, the parties desire to amend the terms and conditions of the contract agreement between the Metropolitan Government of Nashville and Davidson County and Natures Best Organics of Tennessee, LLC, Contract No. 385153, and do hereby mutually agree to add of the following:

1. The original contract holder, **NATURES BEST ORGANICS OF TENNESSEE, LLC** agrees to assign the contract to the newly named entity, **LETCO GROUP LLC DBA LIVING EARTH. LIVING EARTH** agrees to the terms and conditions of the original contract, and assumes all obligations of performance thereunder . Metro agrees to continue the contract under with **LIVING EARTH** as the contractor.
2. Paragraph one of the contract header is deleted in its entirety and replaced with the following:

"1.1 Heading

*This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County ("METRO")** and **Letco Group, LLC dba Living Earth (CONTRACTOR)** located at 1901 California Crossing Road, Dallas, Texas, 75220. This contract consists of the following documents:*

- *Any properly executed contract amendment (most recent with first priority),*
- *This document and affidavit(s), including Exhibits,*
- *The solicitation documentation (made a part of this contract by reference), (RFQ# 894497)*
- *Purchase orders (and PO Changes),*
- *CONTRACTOR's response to solicitation,*

In the event of conflicting provisions, all documents shall be construed in the order listed above."

Metro agrees to continue the contract with **LIVING EARTH** as the contractor. The terms and conditions associated to the original contract number, 385153 are hereby transferred to the new contract number, 422699. Upon execution of this assignment amendment, Contract 385153 will end and continue under contract 422699, with **LIVING EARTH** assuming all obligations thereunder as contractor. Contract number 422699 shall be used for future Purchase Orders.

LIVING EARTH will provide METRO a bond in the amount of \$750,000.00 no later than January 31, 2018.

This amendment shall not be binding upon the parties until it has been signed first by **NATURES BEST ORGANIC OF TENNESSEE, LLC** and **LIVING EARTH**, then by the representatives of the Metropolitan Government and has been filed in the Office of the Metropolitan Clerk. When it has been so signed and filed, this amendment shall be effective as of the date first written above.

Terms and Conditions

1. GOODS AND SERVICES CONTRACT

1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and Nature's Best Organics of Tennessee, LLC ("CONTRACTOR") located at 5800 Perkins Place Drive, Suite 6A, Baton Rouge, LA 70808. This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*

- *The solicitation documentation for RFQ# 894497 and affidavit(s) (all made a part of this contract by reference),*
- *Purchase Orders (and PO Changes),*
- *CONTRACTOR's response to the solicitation,*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Duties and Responsibilities

1. CONTRACTOR agrees to provide, all labor, material, and equipment for the receiving, processing, and composting of all yard waste and vegetative storm debris collected and delivered by or on behalf of METRO as part of routine collection route and major storm events. As Metro's primary provider, Contractor shall have the capacity to receive and process ALL yard waste collected by or on behalf of METRO or METRO's Contractors, including storm debris such as trees and tree limbs on public property and right of ways ("Vegetative Storm Debris"). CONTRACTOR agrees to provide a minimum of two (2) locations (West and East Part of Metropolitan Nashville and Davidson County). CONTRACTOR shall ensure that both West and East locations have State of Tennessee certified truck scales and a tipping area accessible to METRO trucks 24 hours per day /7 days per week. Quarterly documentation shall be submitted to Metro Public Works by the CONTRACTOR verifying that scales have been tested and are accurate. CONTRACTOR must notify Metro Public Works within two (2) hours if any problems with the scales occur. It is the intent of this Agreement that the CONTRACTOR'S services shall encompass natural disasters and/or major storm events. In the event of a natural disaster and/or major storm event, CONTRACTOR may supplement its then existing sites and services in order to accommodate any storm-related volumes of material that might otherwise overburden its then existing facilities. In the event CONTRACTOR determines that it lacks capacity to provide such services through then existing and/or supplemental facilities, to provide such services due to the volume of material generated thereby, CONTRACTOR shall promptly notify METRO of same, and METRO shall then have the right to seek such additional and supplementary services as may be necessary due to such natural disaster and/or a major storm event.
2. CONTRACTOR agrees to provide requested reports to METRO on an as needed basis. In the event of

CONTRACTOR'S actual or threatened insolvency, CONTRACTOR agrees to permit METRO'S review of CONTRACTOR'S financial statements at Contractor's place of business.

2.2. Delivery and/or Installation.

All deliveries (if applicable to and provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.

3. CONTRACT TERM

3.1. Contract Term

The Contract will be effective December 1, 2016, once approved by all required parties and filed in the Metropolitan Clerk's Office. The initial Contract Term of one hundred and twenty (120) months will initiate on December 1, 2016, the date of CONTRACTOR'S first provision of services.

This Contract may be extended by letter signed by the Purchasing Agent for two (2) additional five year renewal periods. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in no event shall the combined term of this Contract exceed two hundred and forty (240) months from the effective date. These contract terms have been submitted and approved by Metro Council as an ordinance.

4. COMPENSATION

4.1. Contract Value

This Contract has an estimated value of \$10,000,000.00. The pricing details are as follows:

1. METRO will pay CONTRACTOR Twenty-Seven and 91/100 (\$27.91) Dollars per ton of yard waste or vegetative storm debris ("Yard Waste Materials") delivered by or on behalf of METRO or the Department and received at the CONTRACTOR'S site(s) and payment will be based on the payload of each vehicle (the "Payload") received at CONTRACTOR'S site. The Payload shall be determined in the following manner: (1) each fully loaded vehicle delivering Yard Waste Materials will be first be weighed upon entering CONTRACTOR'S site to determine its loaded weight (the "Loaded Weight"); (2) the vehicles will then off-load the Yard Waste Materials on the site and will be weighed again once unloaded before exiting the site to determine its empty weight or tare weight (the "Empty Weight"); with (3) the difference between the Loaded Weight and the Empty Weight constituting the Payload.
2. Until further notice, METRO and CONTRACTOR agree that CONTRACTOR will accept yard waste material from residents of Metropolitan Government of Nashville and Davidson County at no charge to the resident. And METRO agrees to reimburse CONTRACTOR for the cost and at the Contracts current pricing structure at the time of the resident delivering the yard waste to either of the CONTRACTOR's facilities. METRO further agrees to reimburse CONTRACTOR a minimum amount of \$5 per resident

transaction. CONTRACTOR will verify residency by checking the driver's license of the driver prior to accepting the resident yard waste material.

3. CONTRACTOR will provide the Department one (1) cubic yard of mulch for each twenty (20) tons of yard waste delivered by the Department up to an annual maximum of \$25,000 in retail value. METRO shall have the responsibility to collect this mulch from CONTRACTOR'S site(s).
4. CONTRACTOR will accrue or accumulate Two (\$2.00) for each ton of yard waste/vegetative storm debris received from METRO during the 120 month term of this contract. Accumulated sums will accrue interest at an annual rate of 2.5% with same compounding annually over the 120 month contract term. In the event the Purchasing Agent chooses to exercise its option to extend this Contract for five additional years (years 11-15 or months 121-180) then one half of the accrued and accumulated sums from the prior 120 month contract term will be credited equally over the 60 additional months future invoicing. Likewise, in the event the Purchasing Agent chooses to exercise its option to extend this Contract for the second five additional years (years 16-20 or months 181-240) then the remaining one half or the balance of the accrued and accumulated sums from the original 120 month contract term will be credited equally over the final 60 months future invoicing.
5. Notwithstanding the foregoing, upon the occurrence of a major storm event including but not limited to strong thunderstorms, tornadoes, floods and similar occurrences ("Major Storm Event"), that causes an unusually large volume of construction related debris generated by the storm ("Construction Materials Storm Debris"), CONTRACTOR agrees, for additional compensation to be determined at the time of METRO's need, to allow its facilities to be used as staging and transfer site(s) ("Construction Material Storm Debris Staging Sites") for Construction Materials Storm Debris. Construction Materials Storm Debris shall include, but not be limited to: building materials, demolition debris, concrete, asphalt, soil, and other similar debris that may be generated by a Major Storm Event. Following a Major Storm Event, the Construction Material Storm Debris Staging Sites will be provided to METRO on an as-needed basis, and METRO will compensate CONTRACTOR based on the actual services agreed to and ultimately provided by the CONTRACTOR at the time, such as receiving, staging, unloading, reloading, storing, handling, reducing and/or processing the Construction Materials Storm Debris for METRO.

CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.

4.2. Other Fees

There will be no other charges or fees for the performance of this Contract under ordinary circumstances. METRO will make reasonable efforts to make any payments within 15-30 days of receipt of invoice but in any event shall make payment within 60 days. METRO shall receive a two percent (2%) discount in the amount owed on an invoice if payment is received by CONTRACTOR within 15 days of METRO's receipt of CONTRACTOR'S invoice.

4.3. Payment Methodology

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with this Article 4 of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for services properly authorized by METRO in

accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the services provided under this Contract and as determined by METRO.

4.4. Escalation/De-escalation

This Contract is eligible for annual escalation/de-escalation adjustments by either the CONTRACTOR or METRO. The maximum escalation/de-escalation adjustments request cannot exceed 3% annually. The request for adjustment must include current pricing structure, proposed pricing adjustment, percentage change, and the appropriate consumer price index (All Urban Consumers Index) and/or financial statements to justify the change. Any request made by the CONTRACTOR must be submitted to the department for review no less than ninety (90) days prior to the annual anniversary of the effective date of the contract by the CONTRACTOR. The request, including departmental approval and documentation, must be submitted to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the effective date of the contract by CONTRACTOR. Any such adjustment shall become effective on December 1 which is the anniversary of the effective date of the Contract.

4.5. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4.6. Invoicing Requirements

On the basis of pricing as set forth in this Article 4, CONTRACTOR shall invoice METRO no more frequently than once a month or for the satisfactorily and accurately performed services, whichever is less frequent. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. CONTRACTOR shall submit all invoices no later than ninety (90) days after the services have been performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming service but prior to any substantial change in condition of the services caused by METRO.

4.7. Subcontractor/Subconsultant Payments

When payment is received from METRO, CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, subconsultants, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event METRO becomes informed that CONTRACTOR has not paid a subcontractor, subconsultant, laborer, or supplier as provided herein, METRO shall have the right, but not the duty, to issue future checks and payments to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and any such subcontractor, subconsultant, laborer, or supplier as joint payees. Such joint check procedure, if employed by METRO, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit METRO to repeat the procedure in the future. If persistent, this may be determined to be a material breach of this Contract.

5. TERMINATION

5.1. Breach

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days of receipt of written notice of such default. If CONTRACTOR fails to satisfactorily and timely cure the default, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

Should METRO fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if it should violate any of the terms of this Contract, CONTRACTOR shall identify the breach and METRO shall cure the performance within thirty (30) days of receipt of written notice of such default. If METRO fails to satisfactorily and timely cure the default, CONTRACTOR shall have the right to immediately terminate this Contract. Such termination shall not relieve METRO of any liability to CONTRACTOR for damages sustained by virtue of any breach by METRO.

5.2. Lack of Funding

Should funding for this Contract be discontinued, METRO shall have the right to terminate this Contract immediately upon written notice to CONTRACTOR.

5.3. Notice

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and promptly process and submit all final billing to METRO for services performed through the effective date of termination.

In consideration of the CONTRACTOR'S start-up costs, and other expenses of operation incurred in establishing the multiple processing sites for the services being provided herein, in the event METRO gives notice of termination of this Contract under this sub-part prior to December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount equal to the per ton processing fee of \$27.91, multiplied by not less than 25,000 tons of yard waste, such tonnage being the annual projected volume of yard waste to be delivered by METRO. If METRO terminates this Contract under this sub-part in any successive year after December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount equal to the per ton processing fee in effect at the time of notice of termination, multiplied by the annual projected tons of delivered yard waste (25,000 tons), provided that the such projected tonnage figure shall be reduced ten (10) percent per year (e.g. after December 1, 2017 = 22,500 tons ; after December 1, 2018 = 20,000 tons; after December 1, 2019 = 17,500 tons, etc. until the initial 10 year term of the Contract expires) There will be no compensation anticipated under this provision for any extensions to this Contract for either of the two (2) potential additional five year renewal periods provided for in this Contract.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.4. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. BOND

7.1. Surety Bond

CONTRACTOR shall furnish a performance bond to METRO in the amount of \$750,000.00 for the first initial year of the contract term. CONTRACTOR shall submit a new bond annually for the amount to be determined based on prior years' financial performance. The bond shall set forth a penal sum limited to the amount of \$750,000.00 or the annual bond value which is one year's work of exposure. CONTRACTOR and/or the Surety will only be financially responsible for one year worth of exposure, \$750,000.00, or the annual bond value if CONTRACTOR should default on the contract. The bond furnished by CONTRACTOR shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bond. The performance bond furnished by CONTRACTOR shall be in a form suitable to METRO and shall be executed by a surety licensed to do business in Tennessee and reasonably acceptable to METRO. The bond shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of

appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

8. INSURANCE

8.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension(s), the types and amounts of insurance identified below. Proof of insurance shall be required naming METRO as additional insured and identifying either the project name, RFQ, Purchase Order, or Contract number on the ACORD document.

8.2. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

8.3. Automobile Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (if CONTRACTOR will be making on-site deliveries)

8.4. Worker's Compensation Insurance (if applicable)

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

8.5. Pollution Liability Insurance

Pollution Liability Insurance in the amount of one million (\$1,000,000.00) dollars

8.6. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that

includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

8.7. Other Insurance Requirements

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METROPOLITAN COURTHOUSE, SUITE 108
PO BOX 196300
NASHVILLE, TN 37219-6300**

Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.

Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

9. GENERAL TERMS AND CONDITIONS

9.1. Taxes

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

9.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice.

Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

9.3. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing
- Remove the products or discontinue the services and cancel any future charges pertaining thereto

Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:

- The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
- The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,
- The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

9.4. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. CONTRACTOR shall, upon written notification by METRO, maintain any records relating to a FEMA declared incident/disaster for a period of seven (7) years after the last FEMA project related to the declared disaster has been completed. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

9.5. Monitoring

CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

METRO shall have the option of reviewing and performing a security assessment of the information security management practices of CONTRACTOR. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at CONTRACTOR's premises the Products and/or Services to ensure compliance with the terms and conditions of this Contract. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

9.6. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Contract; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR; and, all other original works of authorship, whether created by METRO or CONTRACTOR embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

Except as to Contracts involving sensitive information, CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior

written authorization. CONTRACTOR shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the METRO Chief Information Security Officer .

9.7. Modification of Contract

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

9.8. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

9.9. Waiver

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

9.10. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

9.11. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

9.12. Iran Divestment Act

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR

certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

9.13. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

9.14. Ethical Standards

CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

9.15. Indemnification and Hold Harmless

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. To the extent of any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. To the extent of any claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all such claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

9.16. Assignment--Consent Required

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in

whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request. Consent to assignment shall not be unreasonably withheld.

9.17. Entire Contract

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

9.18. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

9.19. Governing Law

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

9.20. Venue

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

9.21. Severability

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

[BALANCE OF PAGE IS INTENTIONALLY LEFT BLANK]

Contract Number 385153

Notices and Designation of Agent for Service of Process

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT
PROCUREMENT DIVISION
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR: Nature's Best Organics of Tennessee, LLC
Attention: Blake Brian
Address: 5800 One Perkins Place. Suite 6-A Baton Rouge, LA 70808
Telephone: 225 766 1443
Fax: 225 766 1445
E-mail: Bbrian@nbotn.com

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will waive any objection to service of process if process is served upon this agent:

Designated Agent: David A Draper Attorney at Law Lewis, Thomason
Attention: David Draper
Address: 620 Market Street 5th Floor PO Box 2425 Knoxville, TN 37901

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Contract Number 385153

Effective Date

This contract shall not be binding upon the parties until it has been fully electronically approved by the supplier, the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

CONTRACTOR

APPROVED AS TO PROJECT SCOPE:

DocuSigned by:
Mark Sturtevant
Dept. / Agency / Comm. Head or Board Chair.
020698A5C4FD49A...
DS
SKW
Dept. Fin

Nature's Beat Organics of Tennessee LLC
Company Name

APPROVED AS TO COMPLIANCE WITH PROCUREMENT CODE:

DocuSigned by:
Jeff L. Gossage
Purchasing Agent
7D9F3E023C9F4E2...
DS
TRT
Purchasing

DocuSigned by:
[Signature]
Signature of Company's Contracting Officer
22B08E73E41E...

Sid Brian
Officer's Name

APPROVED AS TO AVAILABILITY OF FUNDS:

DocuSigned by:
Talia Lomax O'Dneal
Director of Finance
EC3E427F849C47C...
DS
AN
OMB
DS
AV
BA

Manager
Officer's Title

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:
Tara Ladd
Metropolitan Attorney
F9D9E768800D426...
DS
BL
Insurance

FILED BY THE METROPOLITAN CLERK:

DocuSigned by:
Shannon Hall
Metropolitan Clerk
9B8C9C867146F...
12/9/2016
Date

DESCRIPTIONS (Continued from Page 1)**Sidney G. Brian****Billie A. Brian****Waiver of Our Right to Recover Fm Others Endt -where req'd by
wrtn contr****Terrorism Risk Insurance Act Endorsement - No Charge****Foreign Terrorism Premium Endorsement****LA - Officers Included - Sid Brian (Billie Excluded in LA - see
em fldr)****TN - Partners, Officers & Others Excl Endt - Sid & Billie
excluded****Employers Liability Coverage Endorsement****Non-Cooperation with Premium Audit Endorsement****MS - Cancellation Endorsement****** Supplemental Name ******First Supplemental Name applies to all policies - Name Printed on DEC Page: Trinity Business Group, LLC****Policy# 03096165 - Insured Multiple Names: Natural Resources Recovery of Tennessee, LLC.****(Inactive)****Policy# 03096165 - Insured Multiple Names: Brian Development, LLC****Policy# 03096165 - Insured Multiple Names: Billie A. Brian, Inc.****Policy# 03096165 - Insured Multiple Names: Leaf Nursery's, LLC****(Inactive)****Policy# 03096165 - Insured Multiple Names: Nature's Best Organics at Forest Hill, LLC****(Inactive)****Policy# 03096165 - Insured Multiple Names: Natural Resources Recovery, LLC****Policy# 03096165 - Insured Multiple Names: Ronaldson Field, LLC****Policy# 03096165 - Insured Multiple Names: Nature's Best Organics of Tennessee, LLC****(New Tennessee)****Policy# 03096165 - Additional Insured: Bethel, LLC****Policy# 03096165 - Insured Multiple Names: ASH Mitigation Bank, LLC (aka Ash Slough Headwaters M B****(aka) Ash Slough Headwaters Mitigation Bank****Policy# 03096165 - Additional Insured: Frontier Land, LLC (Inactive)****Policy# 03096165 - : -****Policy# 03096167 - Insured Multiple Names: Natural Resources Recovery of Tennessee, LLC (Old TN)****Policy# 03096167 - Insured Multiple Names: Brian Development, LLC****Policy# 03096167 - Insured Multiple Names: Billie A. Brian, Inc****Policy# 03096167 - Insured Multiple Names: Leaf Nursery's, LLC (Inactive)****Policy# 03096167 - Insured Multiple Names: Nature's Best Organics at Forest Hill, LLC (Inactive)****Policy# 03096167 - Insured Multiple Names: Natural Resources Recovery, LLC****Policy# 03096167 - Insured Multiple Names: Ronaldson Field, LLC****Policy# 03096167 - Insured Multiple Names: Nature's Best Organics of Tennessee, LLC (New TN)****Policy# 03096167 - Insured Multiple Names: Bethel, LLC****Policy# 03096167 - Insured Multiple Names: A.S.H. Mitigation Bank, LLC (aka Ash Slough Headwaters M B)****aka - Ash Slough Headwaters Mitigation Bank****Policy# 03096167 - Insured Multiple Names: Frontier Land, LLC (Inactive)****Policy# 19614616 - Insured Multiple Names: Brian Development, LLC****Policy# 19614616 - Insured Multiple Names: Natural Resources Recovery of Tennessee, LLC (Old TN)****Policy# 19614616 - Insured Multiple Names: Natural Resources Recovery, LLC****Policy# 19614616 - Insured Multiple Names: Ronaldson Field, LLC****Policy# 19614616 - Insured Multiple Names: Nature's Best Organics of Tennessee, LLC - (New TN)****Policy# 19614616 - Insured Multiple Names: Billie A. Brian, Inc.****Policy# PICLA0003934 - Insured Multiple Names: Brian Development, LLC****Policy# PICLA0003934 - Insured Multiple Names: Billie A. Brian, Inc.****Policy# PICLA0003934 - Insured Multiple Names: Natural Resouces Recovery of Tennessee, LLC.****Policy# PICLA0003934 - : Natural Resources Recovery, LLC****Policy# PICLA0003934 - : Ronaldson Field, LLC****Policy# PICLA0003934 - : Nature's Best Organics of Tennessee, LLC****Policy# PICLA0003934 - Insured Multiple Names: Bethel, LLC**

DESCRIPTIONS (Continued from Page 1)

Metropolitan Government of Nashville and Davidson County, its officials, officers, employees, and volunteers are named as additional insureds per general liability additional insured endorsement and automobile liability additional insured endorsement

RFQ # 894497 - Processing and Composting of Yard Waste Evaluation Team Score Sheet

Offeror	Alternative Energy Products LLC	B & B Ranch LLC	Nature's Best Organic	Queen's Tree Surgery	Red River Ranch
Facility & Transition Information (25 Points)	20.00	10.00	25.00	15.00	18.00
Experience & Qualifications (25 Points)	20.00	10.00	25.00	11.00	25.00
Cost (50 Points)	41.81	50.00	34.75	32.02	27.55
Total Evaluation Scores	81.81	70.00	84.75	58.02	70.55

Alternative Energy Products LLC (81.81)

Comments - Proposed centralized location within 5 miles from Metropolitan Courthouse; proposed location currently has operates as a composting of yard waste facility; experience and qualifications lacks detail; no transition plan

B & B Ranch, LLC (70.00)

Comments - Proposed location small and in floodplain which cannot be permitted; No letters of recommendation included as stated in proposal; no list of equipment provided; no dates of contract provided; "company been in business for 3 years; but purchased a wood grinding company (in whole, employees, contracts, etc...) that had been in business for 12 years".

Nature's Best Organic (84.75)

Comments - Proposed to run two (2) facilities simultaneously that provides operating cost savings to city; strong experience and qualifications specifically with local governments

Queen's Tree Surgery (58.02)

Comments - Proposed location is small; overall proposal lacks detail; experience demonstrated is commercial land clearing and brush pickup; failed to provide responses to corporate criminal conviction, debarment or suspension by the Federal Government; "Queen's Tree Must receive a minimum of 10000 tons annually to be viable" when Metro does not guarantee a minimum quantity.

Red River Ranch (70.55)

Comments - Strong detail experience & qualifications; Metro experience; proposed small location near single family homes that would need rezoned.

Enter Solicitation Title & Number Below		
RFQ # 894497 - Processing and Composting of Yard Waste		RFP Cost Points
		50
Offeror's Name	Bids	RFP Cost Point Distribution
Alternative Energy Products	\$ 2,968,500.00	41.81
B & B Ranch	\$ 2,482,327.16	50.00
Nature Bests	\$ 3,571,710.50	34.75
Queens Tree	\$ 3,875,669.14	32.02
Red River Ranch	\$ 4,505,045.96	27.55



Contract Standards Deviations

Contract Purchase Agreement 385153,0: Contract Standards Deviations - 11-Oct-2016

Supplier	Nature's Best Organic's of TN, LLC	Supplier Site	TBG
Buyer	TROUP, TERRI R	Amount	10000000.00
Contract Template	MASTER Goods and Services Contract		

Deviation Summary

Clause Deviations

Category	Non-Standard clauses	
Deviation	Section	Clause Title
Non-Standard clause added	7. BOND	7.1. 163:Surety Bond
Non-Standard clause added	8. INSURANCE	8.5. Pollution Liability Insurance
Standard clause modified	1. GOODS AND SERVICES CONTRACT	1.1. 37:Heading
Standard clause modified	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:	2.1. 35:Duties and Responsibilities
Standard clause modified	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:	2.2. 24:Delivery and/or Installation.
Standard clause modified	3. CONTRACT TERM	3.1. 36:Contract Term
Standard clause modified	4. COMPENSATION	4.1. 38:Contract Value
Standard clause modified	4. COMPENSATION	4.2. 39:Other Fees
Standard clause modified	4. COMPENSATION	4.3. 135:Payment Methodology
Standard clause modified	4. COMPENSATION	4.4. 27:Escalation/De-escalation
Standard clause modified	4. COMPENSATION	4.6. 136:Invoicing Requirements
Standard clause modified	5. TERMINATION	5.1. 31:Breach
Standard clause modified	5. TERMINATION	5.3. 33:Notice
Standard clause modified	9. GENERAL TERMS AND CONDITIONS	9.4. 34:Maintenance of Records
Standard clause modified	9. GENERAL TERMS AND CONDITIONS	9.7. 60:Modification of Contract
Standard clause modified	9. GENERAL TERMS AND CONDITIONS	9.15. 67:Indemnification and Hold Harmless
Standard clause modified	9. GENERAL TERMS AND CONDITIONS	9.16. 6:Assignment--Consent Required
Standard clause modified	9. GENERAL TERMS AND CONDITIONS	9.18. 69:Force Majeure
Category	Standard clauses missing	
Deviation	Section	Clause Title
Optional clause removed	6. NONDISCRIMINATION	6.3. 44:Procurement Nondiscrimination Program Requirement
Optional clause removed	7. INSURANCE	7.2. 50:Products Liability Insurance
Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.3. 167:Software License



Contract Standards Deviations

Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.4. 134:Confidentiality
Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.5. 192:Information Ownership
Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.6. 201:Information Security Breach Notification
Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.7. 195:Virus Representation and Warranty
Optional clause removed	8. GENERAL TERMS AND CONDITIONS	8.21. 7:Attorney Fees

Policy Deviations

Deviation	Description	Line	Item	Item Description
	The contract has no Policy Deviations			



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	7.1. 163:Surety Bond
Section	7. BOND
Deviation	Non-Standard clause added

Clause Text

CONTRACTOR shall furnish a performance bond to METRO in the amount of \$750,000.00 for the first initial year of the contract term. CONTRACTOR shall submit a new bond annually for the amount to be determined based on prior years' financial performance. The bond shall set forth a penal sum limited to the amount of \$750,000.00 or the annual bond value which is one year's work of exposure. CONTRACTOR and/or the Surety will only be financially responsible for one year worth of exposure, \$750,000.00, or the annual bond value if CONTRACTOR should default on the contract. The bond furnished by CONTRACTOR shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bond. The performance bond furnished by CONTRACTOR shall be in a form suitable to METRO and shall be executed by a surety licensed to do business in Tennessee and reasonably acceptable to METRO. The bond shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	8.5. Pollution Liability Insurance
Section	8. INSURANCE
Deviation	Non-Standard clause added

Clause Text

Pollution Liability Insurance in the amount of one million (\$1,000,000.00) dollars



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	1.1. 37:Heading
Section	1. GOODS AND SERVICES CONTRACT
Deviation	Standard clause modified

Clause Text

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and Nature's Best Organics of Tennessee, LLC ("CONTRACTOR") located at 5800 Perkins Place Drive, Suite 6A, Baton Rouge, LA 70808. This Contract consists of the following documents:

- ***Any properly executed contract amendment (most recent with first priority),***
- ***This document, including exhibits,***
- ***The solicitation documentation for RFQ# 894497 and affidavit(s) (all made a part of this contract by reference),***
- ***Purchase Orders (and PO Changes),***
- ***CONTRACTOR's response to the solicitation,***

In the event of conflicting provisions, all documents shall be construed in the order listed above.

Comparison to Standard

This contract is initiated by and between The Metropolitan Government of Nashville and Davidson County ("METRO") and ~~Enter Legal Name~~ Nature's Best Organics of Tennessee, LLC ("CONTRACTOR") located at ~~Enter Address, City, ST, ZIP~~ 5800 Perkins Place Drive, Suite 6A, Baton Rouge, LA 70808. This Contract consists of the following documents:

- Any properly executed contract amendment (most recent with first priority),
- This document, including exhibits,
- The solicitation documentation for RFQ# ~~{Enter Number}~~ 894497 and affidavit(s) (all made a part of this contract by reference),
- Purchase Orders (and PO Changes),
- CONTRACTOR's response to the solicitation, -

~~—
• Procurement Nondiscrimination Program forms (incorporated by reference).~~

In the event of conflicting provisions, all documents shall be construed in the order listed above.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	2.1. 35:Duties and Responsibilities
Section	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:
Deviation	Standard clause modified

Clause Text

1. CONTRACTOR agrees to provide, all labor, material, and equipment for the receiving, processing, and composting of all yard waste and vegetative storm debris collected and delivered by or on behalf of METRO as part of routine collection route and major storm events. As Metro's primary provider, Contractor shall have the capacity to receive and process ALL yard waste collected by or on behalf of METRO or METRO's Contractors, including storm debris such as trees and tree limbs on public property and right of ways ("Vegetative Storm Debris"). CONTRACTOR agrees to provide a minimum of two (2) locations (West and East Part of Metropolitan Nashville and Davidson County). CONTRACTOR shall ensure that both West and East locations have State of Tennessee certified truck scales and a tipping area accessible to METRO trucks 24 hours per day /7 days per week. Quarterly documentation shall be submitted to Metro Public Works by the CONTRACTOR verifying that scales have been tested and are accurate. CONTRACTOR must notify Metro Public Works within two (2) hours if any problems with the scales occur. It is the intent of this Agreement that the CONTRACTOR'S services shall encompass natural disasters and/or major storm events. In the event of a natural disaster and/or major storm event, CONTRACTOR may supplement its then existing sites and services in order to accommodate any storm-related volumes of material that might otherwise overburden its then existing facilities. In the event CONTRACTOR determines that it lacks capacity to provide such services through then existing and/or supplemental facilities, to provide such services due to the volume of material generated thereby, CONTRACTOR shall promptly notify METRO of same, and METRO shall then have the right to seek such additional and supplementary services as may be necessary due to such natural disaster and/or a major storm event.
2. CONTRACTOR agrees to provide requested reports to METRO on an as needed basis. In the event of CONTRACTOR'S actual or threatened insolvency, CONTRACTOR agrees to permit METRO'S review of CONTRACTOR'S financial statements at Contractor's place of business.

Comparison to Standard

-
- CONTRACTOR agrees to provide, all labor, material, and equipment for the receiving, processing, and composting of all yard waste and vegetative storm debris collected and delivered by or on behalf of METRO as part of routine collection route and major storm events. As Metro's primary provider, Contractor shall have the capacity to receive and process ALL yard waste collected by or on behalf of METRO or METRO's Contractors, including storm debris such as trees and tree limbs on public property and right of ways ("Vegetative Storm Debris"). CONTRACTOR agrees to provide a minimum of two (2) locations (West and East Part of Metropolitan Nashville and Davidson County). CONTRACTOR shall ensure that both West and East locations have State of Tennessee certified truck scales and a tipping area accessible to METRO trucks 24 hours per day /7 days per week. Quarterly documentation shall be submitted to Metro Public Works by the goods and/or CONTRACTOR verifying that scales have been tested and are accurate. CONTRACTOR must notify Metro Public Works within two (2) hours if any problems with the scales occur. It is the intent of this Agreement that the CONTRACTOR'S services as briefly described below shall encompass natural disasters and/or major storm events. In the event of a natural disaster and/or major storm event, CONTRACTOR may supplement its then existing sites and more fully defined services in order to accommodate any storm-related volumes of material that might otherwise overburden its then existing facilities. In the solicitation-
- event CONTRACTOR determines that it lacks capacity to provide such services through then existing and/or supplemental facilities, to provide such services due to the volume of material generated thereby, CONTRACTOR shall



Contract Standards Deviations

promptly notify METRO of same, and METRO shall then have the right to seek such additional and supplementary services as may be necessary due to such natural disaster and/or a major stormevent.CONTRACTOR agrees to provide requested reports to METRO on an as needed basis. In the event of CONTRACTOR'S actual or threatened insolvency, CONTRACTOR agrees to permit METRO'S review of CONTRACTOR'S financial statements at Contractor's place of business.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	2.2. 24:Delivery and/or Installation.
Section	2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:
Deviation	Standard clause modified

Clause Text

All deliveries (if applicable to and provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.

Comparison to Standard

All deliveries (if applicable to and provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	3.1. 36:Contract Term
Section	3. CONTRACT TERM
Deviation	Standard clause modified

Clause Text

The Contract will be effective December 1, 2016, once approved by all required parties and filed in the Metropolitan Clerk's Office. The initial Contract Term of one hundred and twenty (120) months will initiate on December 1, 2016, the date of CONTRACTOR'S first provision of services.

This Contract may be extended by letter signed by the Purchasing Agent for two (2) additional five year renewal periods. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in no event shall the combined term of this Contract exceed two hundred and forty (240) months from the effective date. These contract terms have been submitted and approved by Metro Council as an ordinance.

Comparison to Standard

The Contract ~~Term~~ will ~~begin on the date this Contract is~~ be effective December 1, 2016, once approved by all required parties and filed in the Metropolitan Clerk's Office. The initial Contract Term of one hundred and twenty (120) months will ~~end [INSERT END DATE OR AT PROJECT COMPLETION] or when METRO ceases to use any Products and/or Services purchased, licensed, leased, rented, or otherwise acquired from CONTRACTOR. Those terms which by their nature are intended to survive~~ initiate on December 1, 2016, the ~~expiration date~~ of this Contract shall so survive. CONTRACTOR'S first provision of services.

~~[FIRST TWO SENTENCES OF THE NEXT PARAGRAPH MAY BE REMOVED IF THE CONTRACT CANNOT BE EXTENDED]~~

This Contract may be extended by ~~Contract Amendment.~~ letter signed by the Purchasing Agent for two (2) additional five year renewal periods. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in no event shall the combined term of this Contract exceed ~~sixty (60)~~ two hundred and forty (240) months from ~~the date of filing with the Metropolitan Clerk's Office.~~ effective date. These contract terms have been submitted and approved by Metro Council as an ordinance.

Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.1. 38:Contract Value
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

This Contract has an estimated value of \$10,000,000.00. The pricing details are as follows:

1. METRO will pay CONTRACTOR Twenty-Seven and 91/100 (\$27.91) Dollars per ton of yard waste or vegetative storm debris ("Yard Waste Materials") delivered by or on behalf of METRO or the Department and received at the CONTRACTOR'S site(s) and payment will be based on the payload of each vehicle (the "Payload") received at CONTRACTOR'S site. The Payload shall be determined in the following manner: (1) each fully loaded vehicle delivering Yard Waste Materials will be first be weighed upon entering CONTRACTOR'S site to determine its loaded weight (the "Loaded Weight"); (2) the vehicles will then off-load the Yard Waste Materials on the site and will be weighed again once unloaded before exiting the site to determine its empty weight or tare weight (the "Empty Weight"); with (3) the difference between the Loaded Weight and the Empty Weight constituting the Payload.
2. Until further notice, METRO and CONTRACTOR agree that CONTRACTOR will accept yard waste material from residents of Metropolitan Government of Nashville and Davidson County at no charge to the resident. And METRO agrees to reimburse CONTRACTOR for the cost and at the Contracts current pricing structure at the time of the resident delivering the yard waste to either of the CONTRACTOR's facilities. METRO further agrees to reimburse CONTRACTOR a minimum amount of \$5 per resident transaction. CONTRACTOR will verify residency by checking the driver's license of the driver prior to accepting the resident yard waste material.
3. CONTRACTOR will provide the Department one (1) cubic yard of mulch for each twenty (20) tons of yard waste delivered by the Department up to an annual maximum of \$25,000 in retail value. METRO shall have the responsibility to collect this mulch from CONTRACTOR'S site(s).
4. CONTRACTOR will accrue or accumulate Two (\$2.00) for each ton of yard waste/vegetative storm debris received from METRO during the 120 month term of this contract. Accumulated sums will accrue interest at an annual rate of 2.5% with same compounding annually over the 120 month contract term. In the event the Purchasing Agent chooses to exercise its option to extend this Contract for five additional years (years 11-15 or months 121-180) then one half of the accrued and accumulated sums from the prior 120 month contract term will be credited equally over the 60 additional months future invoicing. Likewise, in the event the Purchasing Agent chooses to exercise its option to extend this Contract for the second five additional years (years 16-20 or months 181-240) then the remaining one half or the balance of the accrued and accumulated sums from the original 120 month contract term will be credited equally over the final 60 months future invoicing.
5. Notwithstanding the foregoing, upon the occurrence of a major storm event including but not limited to strong thunderstorms, tornadoes, floods and similar occurrences ("Major Storm Event"), that causes an unusually large volume of construction related debris generated by the storm ("Construction Materials Storm Debris"), CONTRACTOR agrees, for additional compensation to be determined at the time of METRO's need, to allow its facilities to be used as staging and transfer site(s) ("Construction Material Storm Debris Staging Sites") for Construction Materials Storm Debris. Construction Materials Storm Debris shall include, but not be limited to: building materials, demolition debris, concrete, asphalt, soil, and other similar debris that may be generated by a Major Storm Event. Following a Major Storm Event, the Construction Material Storm Debris Staging Sites will be provided to METRO on an as-needed basis, and METRO will compensate CONTRACTOR based on the actual services agreed to and ultimately provided by the CONTRACTOR at the time, such as receiving, staging, unloading, reloading, storing, handling, reducing and/or processing the Construction Materials Storm Debris for METRO.

CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.



Contract Standards Deviations

Comparison to Standard

This Contract has an estimated value of ~~-\$[Agreement Amount]~~ \$10,000,000.00. The pricing details are ~~included~~ as follows:

METRO will pay CONTRACTOR Twenty-Seven and 91/100 (\$27.91) Dollars per ton of yard waste or vegetative storm debris ("Yard Waste Materials") delivered by or on behalf of METRO or the Department and received at the CONTRACTOR'S site(s) and payment will be based on the payload of each vehicle (the "Payload") received at CONTRACTOR'S site. The Payload shall be determined in ~~Exhibit A~~ the following manner: (1) each fully loaded vehicle delivering Yard Waste Materials will be first be weighed upon entering CONTRACTOR'S site to determine its loaded weight (the "Loaded Weight"); (2) the vehicles will then off-load the Yard Waste Materials on the site and ~~are made~~ will be weighed again once unloaded before exiting the site to determine its empty weight or tare weight (the "Empty Weight"); with (3) the difference between the Loaded Weight and the Empty Weight constituting the Payload.

Until further notice, METRO and CONTRACTOR agree that CONTRACTOR will accept yard waste material from residents of Metropolitan Government of Nashville and Davidson County at no charge to the resident. And METRO agrees to reimburse CONTRACTOR for the cost and at the Contracts current pricing structure at the time of the resident delivering the yard waste to either of the CONTRACTOR's facilities. METRO further agrees to reimburse CONTRACTOR a ~~part~~ minimum amount of \$5 per resident transaction. CONTRACTOR will verify residency by checking the driver's license of the driver prior to accepting the resident yard waste material.

CONTRACTOR will provide the Department one (1) cubic yard of mulch for each twenty (20) tons of yard waste delivered by the Department up to an annual maximum of \$25,000 in retail value. METRO shall have the responsibility to collect this mulch from CONTRACTOR'S site(s).

CONTRACTOR will accrue or accumulate Two (\$2.00) for each ton of yard waste/vegetative storm debris received from METRO during the 120 month term of this contract. Accumulated sums will accrue interest at an annual rate of 2.5% with same compounding annually over the 120 month contract term. In the event the Purchasing Agent chooses to exercise its option to extend this Contract for five additional years (years 11-15 or months 121-180) then one half of the accrued and accumulated sums from the prior 120 month contract term will be credited equally over the 60 additional months future invoicing. Likewise, in the event the Purchasing Agent chooses to exercise its option to extend this Contract for the second five additional years (years 16-20 or months 181-240) then the remaining one half or the balance of the accrued and accumulated sums from the original 120 month contract term will be credited equally over the final 60 months future invoicing. Notwithstanding the foregoing, upon the occurrence of a major storm event including but not limited to strong thunderstorms, tornadoes, floods and similar occurrences ("Major Storm Event"), that causes an unusually large volume of construction related debris generated by ~~reference~~ the storm ("Construction Materials Storm Debris"), CONTRACTOR agrees, for additional compensation to be determined at the time of METRO's need, to allow its facilities to be used as staging and transfer site(s) ("Construction Material Storm Debris Staging Sites") for Construction Materials Storm Debris. Construction Materials Storm Debris shall include, but not be limited to: building materials, demolition debris, concrete, asphalt, soil, and other similar debris that may be generated by a Major Storm Event. Following a Major Storm Event, the Construction Material Storm Debris Staging Sites will be provided to METRO on an as-needed basis, and METRO will compensate CONTRACTOR based on the actual services agreed to and ultimately provided by the CONTRACTOR at the time, such as receiving, staging, unloading, reloading, storing, handling, reducing and/or processing the Construction Materials Storm Debris for METRO.



Contract Standards Deviations

CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced.

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Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.2. 39:Other Fees
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

There will be no other charges or fees for the performance of this Contract under ordinary circumstances. METRO will make reasonable efforts to make any payments within 15-30 days of receipt of invoice but in any event shall make payment within 60 days. METRO shall receive a two percent (2%) discount in the amount owed on an invoice if payment is received by CONTRACTOR within 15 days of METRO's receipt of CONTRACTOR'S invoice.

Comparison to Standard

There will be no other charges or fees for the performance of this ~~Contract.~~ Contract under ordinary circumstances. METRO will make reasonable efforts to make any payments within ~~30~~ 15-30 days of receipt of invoice but in any event shall make payment within 60 days. METRO ~~-will make reasonable efforts to make payments to Small Businesses~~ shall receive a two percent (2%) discount in the amount owed on an invoice if payment is received by CONTRACTOR within 15 days of METRO's receipt of ~~-invoice but in any event shall make payment within 60 days.~~ CONTRACTOR'S invoice.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.3. 135:Payment Methodology
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with this Article 4 of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the services provided under this Contract and as determined by METRO.

Comparison to Standard

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all ~~goods and/or~~ services provided under this Contract.

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- METRO will compensate CONTRACTOR in accordance with ~~Exhibit A~~ this Article 4 of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for ~~delivered/performed products and/or~~ services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the ~~products and/or~~ services provided under this Contract and as determined by METRO.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.4. 27:Escalation/De-escalation
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

This Contract is eligible for annual escalation/de-escalation adjustments by either the CONTRACTOR or METRO. The maximum escalation/de-escalation adjustments request cannot exceed 3% annually. The request for adjustment must include current pricing structure, proposed pricing adjustment, percentage change, and the appropriate consumer price index (All Urban Consumers Index) and/or financial statements to justify the change. Any request made by the CONTRACTOR must be submitted to the department for review no less than ninety (90) days prior to the annual anniversary of the effective date of the contract by the CONTRACTOR. The request, including departmental approval and documentation, must be submitted to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the effective date of the contract by CONTRACTOR. Any such adjustment shall become effective on December 1 which is the anniversary of the effective date of the Contract.

Comparison to Standard

- This Contract is eligible for annual escalation/de-escalation ~~adjustments.~~ adjustments by either the CONTRACTOR or METRO. The maximum escalation/de-escalation adjustments request cannot exceed 3% annually. The request for adjustment must ~~be in accordance with Exhibit A~~ include current pricing structure, proposed pricing adjustment, percentage change, and ~~submitted the appropriate consumer price index (All Urban Consumers Index) and/or financial statements to justify the change.~~ Any request made by the CONTRACTOR must be submitted to the department for review no less than ninety (90) days prior to the annual anniversary of the effective date of the contract by the CONTRACTOR. The request, including departmental approval and documentation, must be submitted to the Purchasing Agent no less than sixty (60) days prior to the annual anniversary of the filing effective date of ~~this Contract with the METRO Clerk's Office.~~ contract by CONTRACTOR. Any such ~~adjustment, if approved by the Purchasing Agent,~~ adjustment shall become effective on December 1 which is the anniversary of the filing effective date of ~~this Contract with the METRO Clerk's Office.~~ Contract.

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Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	4.6. 136:Invoicing Requirements
Section	4. COMPENSATION
Deviation	Standard clause modified

Clause Text

On the basis of pricing as set forth in this Article 4, CONTRACTOR shall invoice METRO no more frequently than once a month or for the satisfactorily and accurately performed services, whichever is less frequent. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. CONTRACTOR shall submit all invoices no later than ninety (90) days after the services have been performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming service but prior to any substantial change in condition of the services caused by METRO.

Comparison to Standard

On the basis of pricing as set forth in this Article 4, CONTRACTOR shall invoice METRO no more frequently than once a month or for the satisfactorily and accurately ~~delivered/performed products and/or~~ performed services, whichever is less frequent. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. CONTRACTOR shall submit all invoices no later than ninety (90) days after the ~~products and/or~~ services have been ~~delivered/performed.~~ performed.

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Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming ~~product and/or~~ service but prior to any substantial change in condition of the ~~products and/or~~ services caused by METRO.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	5.1. 31:Breach
Section	5. TERMINATION
Deviation	Standard clause modified

Clause Text

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days of receipt of written notice of such default. If CONTRACTOR fails to satisfactorily and timely cure the default, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

Should METRO fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if it should violate any of the terms of this Contract, CONTRACTOR shall identify the breach and METRO shall cure the performance within thirty (30) days of receipt of written notice of such default. If METRO fails to satisfactorily and timely cure the default, CONTRACTOR shall have the right to immediately terminate this Contract. Such termination shall not relieve METRO of any liability to CONTRACTOR for damages sustained by virtue of any breach by METRO.

Comparison to Standard

~~Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days of receipt of written notice of such default. If CONTRACTOR fails to satisfactorily provide cure, and timely cure the default, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.~~

Should METRO fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if it should violate any of the terms of this Contract, CONTRACTOR shall identify the breach and METRO shall cure the performance within thirty (30) days of receipt of written notice of such default. If METRO fails to satisfactorily and timely cure the default, CONTRACTOR shall have the right to immediately terminate this Contract. Such termination shall not relieve METRO of any liability to CONTRACTOR for damages sustained by virtue of any breach by METRO.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	5.3. 33:Notice
Section	5. TERMINATION
Deviation	Standard clause modified

Clause Text

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and promptly process and submit all final billing to METRO for services performed through the effective date of termination.

In consideration of the CONTRACTOR'S start-up costs, and other expenses of operation incurred in establishing the multiple processing sites for the services being provided herein, in the event METRO gives notice of termination of this Contract under this sub-part prior to December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount equal to the per ton processing fee of \$27.91, multiplied by not less than 25,000 tons of yard waste, such tonnage being the annual projected volume of yard waste to be delivered by METRO. If METRO terminates this Contract under this sub-part in any successive year after December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount equal to the per ton processing fee in effect at the time of notice of termination, multiplied by the annual projected tons of delivered yard waste (25,000 tons), provided that the such projected tonnage figure shall be reduced ten (10) percent per year (e.g. after December 1, 2017 = 22,500 tons ; after December 1, 2018 = 20,000 tons; after December 1, 2019 = 17,500 tons, etc. until the initial 10 year term of the Contract expires) There will be no compensation anticipated under this provision for any extensions to this Contract for either of the two (2) potential additional five year renewal periods provided for in this Contract.

Comparison to Standard

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and ~~deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work,~~ promptly process and submit all final billing to METRO ~~shall determine for services performed through the effective date of termination.~~

In consideration of the CONTRACTOR'S start-up costs, and ~~pay~~ other expenses of operation incurred in establishing the multiple processing sites for the services being provided herein, in the event METRO gives notice of termination of this Contract under this sub-part prior to ~~CONTRACTOR~~ December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount equal to the per ton processing fee of \$27.91, multiplied by not less than 25,000 tons of yard waste, such tonnage being the annual projected volume of yard waste to be delivered by METRO. If METRO terminates this Contract under this sub-part in any successive year after December 1, 2017, then METRO agrees to compensate Contractor with one single payment in an amount ~~due~~ equal to the per ton processing fee in effect at the time of notice of termination, multiplied by the annual projected tons of delivered yard waste (25,000 tons), provided that the such projected tonnage figure shall be reduced ten (10) percent per year (e.g. after December 1, 2017 = 22,500 tons ; after December 1, 2018 = 20,000 tons; after December 1, 2019 = 17,500 tons, etc. until the initial 10 year term of the Contract expires) There will be no compensation anticipated under this provision for ~~satisfactory work.~~ any extensions to this Contract for either of the two (2) potential additional five year renewal periods provided for in this Contract.



Contract Standards Deviations



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	9.4. 34:Maintenance of Records
Section	9. GENERAL TERMS AND CONDITIONS
Deviation	Standard clause modified

Clause Text

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. CONTRACTOR shall, upon written notification by METRO, maintain any records relating to a FEMA declared incident/disaster for a period of seven (7) years after the last FEMA project related to the declared disaster has been completed. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

Comparison to Standard

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. CONTRACTOR shall, upon written notification by METRO, maintain any records relating to a FEMA declared incident/disaster for a period of seven (7) years after the last FEMA project related to the declared disaster has been completed. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

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- All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said



Contract Standards Deviations

records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	9.7. 60:Modification of Contract
Section	9. GENERAL TERMS AND CONDITIONS
Deviation	Standard clause modified

Clause Text

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

Comparison to Standard

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	9.15. 67:Indemnification and Hold Harmless
Section	9. GENERAL TERMS AND CONDITIONS
Deviation	Standard clause modified

Clause Text

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. To the extent of any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. To the extent of any claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all such claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

Comparison to Standard

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. ~~Any~~ To the extent of any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. ~~Any~~ To the extent of any claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all such claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.



Contract Standards Deviations

E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	9.16. 6:Assignment--Consent Required
Section	9. GENERAL TERMS AND CONDITIONS
Deviation	Standard clause modified

Clause Text

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

**METRO'S CHIEF ACCOUNTANT
DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request. Consent to assignment shall not be unreasonably withheld.

Comparison to Standard

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

METRO'S CHIEF ACCOUNTANT

DIVISION OF ACCOUNTS

DEPARTMENT OF FINANCE

PO BOX 196300

NASHVILLE, TN 37219-6300

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the



Contract Standards Deviations

requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request. Consent to assignment shall not be unreasonably withheld.



Contract Standards Deviations

Deviation Category	Non-Standard clauses
Clause Title	9.18. 69:Force Majeure
Section	9. GENERAL TERMS AND CONDITIONS
Deviation	Standard clause modified

Clause Text

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

Comparison to Standard

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	6.3. 44:Procurement Nondiscrimination Program Requirement
Section	6. NONDISCRIMINATION
Deviation	Optional clause removed

Clause Text

The consideration and contact of minority-owned and/or woman-owned business enterprises is required for a responsive offer to most solicitations. The provision of the Procurement Nondiscrimination Program documents shall be part of each applicable solicitation response and incorporated herein by reference. CONTRACTOR agrees to comply with the Procurement Nondiscrimination Program, if applicable, in the execution of this Contract.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	7.2. 50:Products Liability Insurance
Section	7. INSURANCE
Deviation	Optional clause removed

Clause Text

In the amount of one million (\$1,000,000.00) dollars (If the CONTRACTOR is producing the goods purchased by METRO)



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.3. 167:Software License
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or CONTRACTOR's response to the solicitation.

Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.4. 134:Confidentiality
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

CONTRACTOR, and its Agents, for METRO, may have access to sensitive information. CONTRACTOR, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, CONTRACTOR shall return all information in whatever form. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against CONTRACTOR, including but not limited to emergency and ex parte relief where available.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.5. 192:Information Ownership
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, CONTRACOR shall supply METRO with an inventory of METO information that CONTRACOTR stores and/or backs up.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.6. 201:Information Security Breach Notification
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable, CONTRACTOR shall notify METRO of any data breach within 24 hours of CONTRACTOR's knowledge or reasonable belief (whichever is earlier) that such breach has occurred ("Breach Notice") by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. CONTRACTOR shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.7. 195:Virus Representation and Warranty
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

CONTRACTOR represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall CONTRACTOR or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, CONTRACTOR shall compensate METRO for any and all harm, injury, damages, costs, and expenses incurred by METRO resulting from the breach.

For CONTRACTOR managed systems, CONTRACTOR shall install and maintain ICISA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. CONTRACTOR shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices. In addition, CONTRACTOR shall ensure that:

- Anti-virus Software checks for new Anti-virus signatures no less than once per day, and; Anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the Anti-virus signatures for the Anti-virus Software

-



Contract Standards Deviations

Deviation Category	Standard clauses missing
Clause Title	8.21. 7:Attorney Fees
Section	8. GENERAL TERMS AND CONDITIONS
Deviation	Optional clause removed

Clause Text

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of this Contract or to obtain a remedy for any breach of this Contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.



12890 Lebanon Rd., Mt. Juliet, TN 37122 (615)553-9500

PERFORMANCE BOND

BOND NO.: 1139247

KNOW ALL MEN BY THESE PRESENTS, that we, **Nature's Best Organics of Tennessee, LLC**, as Principal (hereinafter the "Principal") and **Lexon Insurance Company** (hereinafter the "Surety"), are held firmly bound unto **The Metropolitan Government of Nashville and Davidson County**, as Oblige, (hereinafter the "Obligee"), in penal sum of **Seven Hundred Fifty Thousand and no/100 Dollars (\$750,000.00)** good and lawful money of the United States of America, for the payment of which, well and truly to be made, the Principal and Surety bind themselves, and each of their administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract with Oblige, dated **October 7, 2016** for **receiving, processing and composting of all yard waste and vegetative storm debris collected and delivered by or on behalf of METRO as part of routine collection route and major storm events**, Contract Purchase Agreement No. **385153** (hereinafter the "Contract"), which Contract is incorporated herein by reference, and;

NOW, THEREFORE, the conditions of this obligation is such that, if the Principal shall perform and carry out the covenant, terms and conditions of said Contract, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER, that:

1. The term of this bond is for the period commencing **December 1, 2016** and expiring **December 1, 2017**, unless released by the Oblige prior thereto. However, the term of this bond may be extended for an additional one-year period by the issuance of a Continuation Certificate by the Surety.
2. Non-renewal by the Surety nor failure of the Principal to provide the Oblige with a replacement bond shall not constitute default under this bond.
3. In the event the Principal shall be declared by the Oblige to be in default under the Contract, the Oblige shall provide the Surety with a written statement setting forth the particular facts of said default no later than thirty (30) days from the date of said default, which notice shall be sent to the Surety by registered mail to the address as stated in Section 6 below.
4. The Surety will have the right and opportunity, at its option to: a.) cure the default, with consent from Oblige; b.) assume the remainder of the Contract and to perform or sublet same to qualified entity acceptable to Oblige; c.) or to tender to the Oblige funds sufficient to pay the cost of completion less the balance of the Contract price up to an amount not to exceed the penal sum of the bond. In no event shall Surety be liable for fines, penalties, liquidated damages or forfeitures assessed against the Principal.

5. The Obligee's acceptance of this bond and reliance upon it as security constitutes is acknowledged and agreement as to the terms under which it is offered and issued by the Surety.

6. All notices, demands and correspondence with respect to this bond shall be in writing and addressed to:

The Surety: Lexon Insurance Company
Attn: Claims Department
12890 Lebanon Rd
Mt Juliet TN 37122-2780

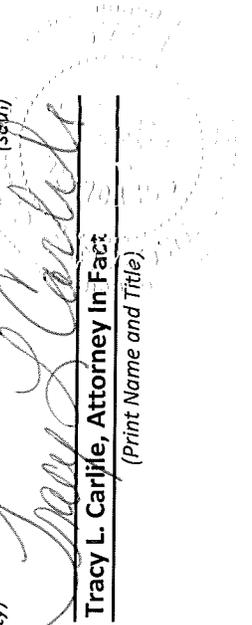
The Principal: Nature's Best Organics of Tennessee, LLC
5800 Perkins Place Dr Ste 6A
Baton Rouge LA 70808

The Obligee The Metropolitan Government of Nashville and Davidson County
Public Works Department
750 S 5th St
Nashville TN 37206-3805

SIGNED, SEALED AND DATED THIS 7TH DAY OF October, 2016.

Nature's Best Organics of Tennessee, LLC
(Principal)  *(seal)*

By: SIDNY G. BRIM
(Print Name and Title)

Lexon Insurance Company
(Surety) 

By: Tracy L. Carlisle
(Print Name and Title)

POWER OF ATTORNEY

LX-283187

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: Tracy L. Catille, Jalene Brown, Christopher L. Dobbs its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$7,500,000.00, Seven Million Five Hundred Thousand dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 5th day of August, 2015.



LEXON INSURANCE COMPANY

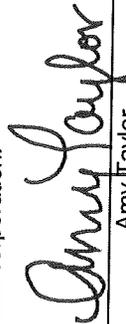
BY 
David E. Campbell
President

ACKNOWLEDGEMENT

On this 5th day of August, 2015, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY TAYLOR
Notary Public- State of Tennessee
Davidson County
My Commission Expires 07-08-19

BY 
Amy Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 7th Day of October, 2016.



BY 
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."

Certificate Of Completion

Envelope Id: 9BC9713243B4444787D5A7116DF1E868	Status: Completed
Subject: Please Sign this Metro Contract 385153 Nature's Best Organics of Tennessee, LLC (Public Works)	
Source Envelope:	
Document Pages: 59	Signatures: 6
Certificate Pages: 17	Initials: 6
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Metro Contract Approvals
Time Zone: (UTC-06:00) Central Time (US & Canada)	730 2nd Ave. South 1st Floor
	Nashville, TN 37219
	angela.doss@nashville.gov
	IP Address: 170.190.198.190

Record Tracking

Status: Original	Holder: Metro Contract Approvals	Location: DocuSign
10/12/2016 8:42:34 AM	angela.doss@nashville.gov	

Signer Events

Signature

Timestamp

<p>TERRI R TROUP terri.troup@nashville.gov Contract Specialist Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:</p>	 Using IP Address: 170.190.198.190	<p>Sent: 10/12/2016 8:52:35 AM Viewed: 10/12/2016 11:06:46 AM Signed: 10/12/2016 11:07:45 AM</p>
<p>Jeff L. Gossage jeff.gossage@nashville.gov Purchasing Agent Long Titled Company LLC with a DBA of Very long non-legal name such as Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/12/2016 1:33:58 PM ID: 12a0cde7-ef2a-40db-837f-08c836b4e5ee</p>	 Using IP Address: 170.190.198.190	<p>Sent: 10/12/2016 11:07:48 AM Viewed: 10/12/2016 1:33:59 PM Signed: 10/12/2016 1:34:05 PM</p>
<p>Sharon Wahlstrom sharon.wahlstrom@nashville.gov Security Level: Email, Account Authentication (None)</p>	 Using IP Address: 170.190.25.139	<p>Sent: 10/12/2016 1:34:07 PM Viewed: 10/13/2016 9:04:32 AM Signed: 10/13/2016 9:05:11 AM</p>
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<p>Alicia Viravouth alicia.viravouth@nashville.gov Security Level: Email, Account Authentication (None)</p>	 Using IP Address: 170.190.198.186	<p>Sent: 10/13/2016 9:05:14 AM Viewed: 10/14/2016 7:56:20 PM Signed: 10/14/2016 7:56:46 PM</p>
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Signer Events

Signature

Timestamp

Sid Brian
sbrian@nrri.net
Manager
Nature's Beat Organics of Tennessee LLC
Security Level: Email, Account Authentication
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Signed using mobile

Sent: 10/14/2016 7:56:48 PM
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Signed: 10/17/2016 5:24:09 PM

Jeff L. Gossage
jeff.gossage@nashville.gov
Purchasing Agent
Long Titled Company LLC with a DBA of Very long
non-legal name such as
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
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Mark Sturtevant
Mark.Sturtevant@nashville.gov
Security Level: Email, Account Authentication
(None)

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Anthony Neumaier
tony.neumaier@nashville.gov
Security Level: Email, Account Authentication
(None)

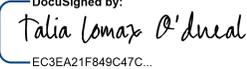
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Talia Lomax O'dneal
talia.lomaxodneal@nashville.gov
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Sally Palmer
sally.palmer@nashville.gov
Security Level: Email, Account Authentication
(None)

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<p>Tara Ladd tara.ladd@nashville.gov Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 12/1/2016 4:11:07 PM ID: ebb416c9-5b75-4316-9542-38235988ae64</p>	 <p>Using IP Address: 170.190.198.144</p>	<p>Sent: 10/20/2016 2:19:21 PM Resent: 12/9/2016 10:25:57 AM Viewed: 12/9/2016 10:32:29 AM Signed: 12/9/2016 10:33:00 AM</p>
<p>Shannon Hall marlene.fuller@nashville.gov 5-11-15 Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 12/9/2016 1:29:12 PM ID: 02f78047-d439-4c90-bf01-7e9c03c8f56b</p>	 <p>Using IP Address: 170.190.198.100</p>	<p>Sent: 12/9/2016 1:23:33 PM Viewed: 12/9/2016 1:29:12 PM Signed: 12/9/2016 1:29:25 PM</p>

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Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
<p>Sharon Smith sharon.smith@nashville.gov Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:</p>		<p>Sent: 12/9/2016 1:29:28 PM Viewed: 12/9/2016 1:30:19 PM</p>
<p>Bryan Gleason bryan.gleason@nashville.gov Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:</p>		<p>Sent: 12/9/2016 1:29:28 PM</p>

Notary Events	Timestamp
Envelope Summary Events	Timestamps
Envelope Sent	Hashed/Encrypted 12/9/2016 1:29:28 PM

Envelope Summary Events**Status****Timestamps**

Certified Delivered

Security Checked

12/9/2016 1:29:28 PM

Signing Complete

Security Checked

12/9/2016 1:29:28 PM

Completed

Security Checked

12/9/2016 1:29:28 PM

Electronic Record and Signature Disclosure

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2. MODIFICATION OF TERMS AND CONDITIONS We reserve the right to modify these Terms and Conditions at any time and in any manner at our sole discretion by: (a) posting a revision on the Site; or (b) sending information regarding the amendment to the email address you provide to us. **YOU ARE RESPONSIBLE FOR REGULARLY REVIEWING THE SITE TO OBTAIN TIMELY NOTICE OF ANY AMENDMENTS. YOU SHALL BE DEEMED TO HAVE ACCEPTED SUCH AMENDMENTS BY CONTINUING TO USE THE SUBSCRIPTION SERVICE FOR MORE THAN 20 DAYS AFTER SUCH AMENDMENTS HAVE BEEN POSTED OR INFORMATION REGARDING SUCH AMENDMENTS HAS BEEN SENT TO YOU.** You agree that we shall not be liable to you or to any third party for any modification of the Terms and Conditions.

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- "Account" means a unique account established by Subscriber to enable its Authorized Users to access and use the Subscription Service.
- "Authorized User" means any employee or agent of Subscriber, identified by a unique email address and user name, who is registered under the Account, provided that no two persons may register, access or use the Subscription Service as the same Authorized User.
- "Contract" refers to a contract, notice, disclosure, or other record or document deposited into the System by Subscriber for processing using the Subscription Service.
- "Envelope" means an electronic record containing one or more eContracts consisting of a single page or a group of pages of data uploaded to the System.
- "Seat" means an active Authorized User listed in the membership of an Account at any one time. No two individuals may log onto or use the Subscription Service as the same Authorized User, but Subscriber may unregister or deactivate Authorized Users and replace them with other Authorized Users without penalty, so long as the number of active Authorized Users registered at any one time is equal to or less than the number of Seats purchased.
- "Service Plan" means the right to access and use the Subscription Service for a specified period in exchange for a periodic fee, subject to the Service Plan restrictions and requirements that are used to describe the selected Service Plan on the Site. Restrictions and requirements may include any or all of the following: (a) number of Seats and/or Envelopes that a Subscriber may use in a month or year for a fee; (b) fee for sent Envelopes in excess of the number of Envelopes allocated to Subscriber under the Service Plan; (c) per-seat or per-user restrictions; (d) the license to use DocuSign software products such as DocuSign Connect Express in connection with the Subscription Service; and (e) per use fees.
- "Specifications" means the technical specifications set forth in the "Subscription Service Specifications" available at <http://docusign.com/company/specifications>.
- "Subscription Service" means DocuSign's on-demand electronic signature service, as updated from time

to time, which provides on-line display, certified delivery, acknowledgement, electronic signature, and storage services for eContracts via the Internet. "System" refers to the software systems and programs, communication and network facilities, and hardware and equipment used by DocuSign or its agents to provide the Subscription Service. "Term" means the period of effectiveness of these Terms and Conditions, as specified in Section 12 below. "Transaction Data" means the metadata associated with an Envelope (such as transaction history, image hash value, method and time of Envelope deletion, sender and recipient names, email addresses and signature IDs) and maintained by DocuSign in order to establish the digital audit trail required by the Subscription Service.

4. SUBSCRIPTION SERVICE

During the term of the Service Plan and subject to these Terms and Conditions, Subscriber will have the right to obtain an Account and register its Authorized Users, who may access and use the Subscription Service, and DocuSign will provide the Subscription Service in material conformance with the Specifications. You must be 18 years of age or older to register for an Account and use the Subscription Service. Subscriber's right to use the Subscription Service is limited to its Authorized Users, and Subscriber agrees not to resell or otherwise provide or assist with the provision of the Subscription Service to any third party. In addition, DocuSign's provision of the Subscription Service is conditioned on Subscriber's acknowledgement and agreement to the following: (a) The Subscription Service facilitates the execution of eContracts between the parties to those eContracts. Nothing in these Terms and Conditions may be construed to make DocuSign a party to any eContract processed through the Subscription Service, and DocuSign makes no representation or warranty regarding the transactions sought to be effected by any eContract; (b) Between DocuSign and Subscriber, Subscriber has exclusive control over and responsibility for the content, quality, and format of any eContract. All eContracts stored by DocuSign are maintained in an encrypted form, and DocuSign has no control of or access to their contents; (c) If Subscriber elects to use one or more of the optional features designed to verify the identity of the intended recipient of an eContract that DocuSign makes available to its subscribers ("Authentication Measures"), DocuSign will apply only those Authentication Measures selected by the Subscriber, but makes no representations or warranties about the appropriateness of any Authentication Measure. Further, DocuSign assumes no liability for: (A) the inability or failure by the intended recipient or other party to satisfy the Authentication Measure; or (B) the circumvention by any person (other than DocuSign) of any Authentication Measure; (d) Certain types of agreements and documents may be exempted from electronic signature laws (e.g. wills and agreements pertaining to family law), or may be subject to specific regulations promulgated by various government agencies regarding electronic signatures and electronic records. DocuSign is not responsible or liable to determine whether any particular eContract is subject to an exception to applicable electronic signature laws, or whether it is subject to any particular agency promulgations, or whether it can be legally formed by electronic signatures; (e) DocuSign is not responsible for determining how long any d to be retained or stored under any applicable laws, regulations, or legal or administrative agency processes. Further, DocuSign is not responsible for or liable to produce any of Subscriber's eContracts or other documents to any third parties; (f) Certain consumer protection or similar laws or regulations may impose special requirements with respect to electronic transactions involving one or more "consumers," such as (among others) requirements that the consumer consent to the method of contracting and/or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. DocuSign does not and is not responsible to: (A) determine whether any

particular transaction involves a “consumer”; (B) furnish or obtain any such consents or determine if any such consents have been withdrawn; (C) provide any information or disclosures in connection with any attempt to obtain any such consents; (D) provide legal review of, or update or correct any information or disclosures currently or previously given; (E) provide any such copies or access, except as expressly provided in the Specifications for all transactions, consumer or otherwise; or (F) otherwise to comply with any such special requirements; and (g) Subscriber undertakes to determine whether any “consumer” is involved in any eContract presented by Subscriber or its Authorized Users for processing, and, if so, to comply with all requirements imposed by law on such eContracts or their formation. (h) If the domain of the primary email address associated with the Account is owned by an organization and was assigned to Subscriber as an employee, contractor or member of such organization, and that organization wishes to establish a commercial relationship with DocuSign and add the Account to such relationship, then, if Subscriber does not change the email address associated with the Account, the Account may become subject to the commercial relationship between DocuSign and such organization and controlled by such organization.

5. RESPONSIBILITY FOR CONTENT OF COMMUNICATIONS As between Subscriber and DocuSign, Subscriber is solely responsible for the nature and content of all materials, works, data, statements, and other visual, graphical, video, and written or audible communications submitted by any Authorized User or otherwise processed through its Account, the Subscription Service, or under any Service Plan. Accordingly: (a) Subscriber will not use or permit the use of the Subscription Service to send unsolicited mass mailings outside its organization. The term “unsolicited mass mailings” includes all statutory or common definitions or understanding of those terms in the applicable jurisdiction, such as those set forth for “Commercial Electronic Mail Messages” under the U.S. CAN-SPAM Act, as an example only; and (b) Subscriber will not use or permit the use of the Subscription Service: (i) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (ii) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability (other than contractual liability of the parties under eContracts processed through the Subscription Service); (iii) in any manner that is likely to damage, disable, overburden, or impair the System or the Subscription Service or interfere with the use or enjoyment of the Subscription Service by others; or (iv) in any way that constitutes or encourages conduct that could constitute a criminal offense. DocuSign does not monitor the content processed through the Subscription Service, but in accordance with DMCA (Digital Millennium Copyright Act) safe harbors, it may suspend any use of the Subscription Service, or remove or disable any content that DocuSign reasonably and in good faith believes violates this Agreement or applicable laws or regulations. DocuSign will use commercially reasonable efforts to notify Subscriber prior to any such suspension or disablement, unless DocuSign reasonably believes that: (A) it is prohibited from doing so under applicable law or under legal process, such as court or government administrative agency processes, orders, mandates, and the like; or (B) it is necessary to delay notice in order to prevent imminent harm to the System, Subscription Service, or a third party. Under circumstances where notice is delayed, DocuSign will provide the notice if and when the related restrictions in the previous sentence no longer apply.

6. PRICING AND PER USE PURCHASES The prices, features, and options of the Subscription Service available for an Account depend on the Service Plan selected by Subscriber. Subscriber may also purchase optional services on a periodic or per-use basis. DocuSign may add or change the prices, features or options available with a

Service Plan without notice. Subscriber's usage under a Service Plan is measured based on the actual number of Seats as described in the Service Plan on the Site. Once a per-Seat Service Plan is established, the right of the named Authorized User to access and use the Subscription Service is not transferable; any additional or differently named Authorized Users must purchase per-Seat Service Plans to send Envelopes. Extra seats, users and/or per use fees will be charged as set forth in Subscriber's Service Plan if allowed by such Service Plan. If a Services Plan defines a monthly Envelope Allowance (i.e. # Envelopes per month allowed to be sent), all Envelopes sent in excess of the Envelope Allowance will incur a per-Envelope charge. Any unused Envelope Allowances will expire and not carry over from one billing period to another under a Service Plan. Subscriber's Account will be deemed to have consumed an Envelope at the time the Envelope is sent by Subscriber, regardless of whether Envelopes were received by recipients, or whether recipients have performed any actions upon any eContract in the Envelope. Powerforms are considered Envelopes within an Envelope Allowance Service Plan, and will be deemed consumed at the time they are "clicked" by any end user regardless of whether or not any actions are subsequently performed upon such Envelope. For Service Plans that specify the Envelope Allowance is "Unlimited," Subscriber is allowed to send a reasonable number of Envelopes from the number of Seats purchased. If DocuSign suspects that the number of Envelopes sent from a particular Seat or a group of Seats is abusive and/or unduly burdensome, DocuSign will promptly notify Subscriber, discuss the use-case scenario with Subscriber and any continued monitoring, additional discussions and/or information required to make a final determination on the course of action based on such information. In the event Subscriber exceeds, in DocuSign's sole discretion, reasonable use restrictions under a Service Plan, DocuSign reserves the right to transfer Subscriber into a higher-tier Service Plan without notice. If you misrepresent your eligibility for any Service Plan, you agree to pay us the additional amount you would have been charged under the most favorable pricing structure for which you are eligible. DocuSign may discontinue a Service Plan at any time, and with prior notice to you, may migrate your Account to a similar Service Plan that may carry a different fee. You agree to allow us to charge your credit card for the fees associated with a substitute Service Plan, even if those fees are higher than those you agreed to when you registered your Account. Optional asures, are measured at the time of use, and such charges are specific to the number of units of the service(s) used during the billing period. Optional services subject to periodic charges, such as additional secure storage, are charged on the same periodic basis as the Service Plan fees for the Subscription Service.

7. SUBSCRIBER SUPPORT DocuSign will provide Subscriber support to Subscriber as specified in the Service Plan selected by Subscriber, and that is further detailed on DocuSign's website.

8. STORAGE DocuSign will store eContracts per the terms of the Service Plan selected by Subscriber. For Service Plans that specify the Envelope storage amount is "Unlimited," DocuSign will store an amount of Envelopes that is not abusive and/or unduly burdensome, in DocuSign's sole discretion. Subscriber may retrieve and store copies of eContracts for storage outside of the System at any time during the Term of the Service Plan when Subscriber is in good financial standing under these Terms and Conditions, and may delete or purge eContracts from the System at its own discretion. DocuSign may, at its sole discretion, delete an uncompleted eContract from the System immediately and without notice upon earlier of: (i) expiration of the Envelope (where Subscriber has established an expiration for such Envelope, not to exceed 365 days); or (ii) expiration of the Term. DocuSign assumes no liability or responsibility for a party's failure or inability to electronically sign any eContract within such a period of time. DocuSign may retain Transaction Data for as long as it has a

business purpose to do so. 9. BUSINESS AGREEMENT BENEFITS You may receive or be eligible for certain pricing structures, discounts, features, promotions, and other benefits (collectively, "Benefits") through a business or government Subscriber's agreement with us (a "Business Agreement"). Any and all such Benefits are provided to you solely as a result of the corresponding Business Agreement and such Benefits may be modified or terminated without notice. If you use the Subscription Service where a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with that entity and/or its authorized agents. If you are enrolled in a Service Plan or receive certain Benefits tied to a Business Agreement with us, but you are liable for your own charges, then you authorize us to share enough account information with that entity and its authorized agents to verify your continuing eligibility for those Benefits and the Service Plan. 10. FEES AND PAYMENT TERMS The Service Plan rates, charges, and other conditions for use are set forth in the Site. Subscriber will pay DocuSign the applicable charges for the Services Plan as set forth on the Site. If you add more Authorized Users than the number of Seats you purchased, we will add those Authorized Users to your Account and impose additional charges for such additional Seats on an ongoing basis. Charges for pre-paid Service Plans will be billed to Subscriber in advance. Charges for per use purchases and standard Service Plan charges will be billed in arrears. When you register for an Account, you will be required to provide DocuSign with accurate, complete, and current credit card information for a valid credit card that you are authorized to use. You must promptly notify us of any change in your invoicing address or changes related to the credit card used for payment. By completing your registration for the Services Plan, you authorize DocuSign or its agent to bill your credit card the applicable Service Plan charges, any and all applicable taxes, and any other charges you may incur in connection with your use of the Subscription Service, all of which will be charged to your credit card. Each time you use the Subscription Service, or allow or cause the Subscription Service to be used, you reaffirm that we are authorized to charge your credit card. You may terminate your Account and revoke your credit card authorization as set forth in the Term and Termination section of these Terms and Conditions. We will provide you with one invoice in a format we choose, which may change from time to time, for all Subscription Service associated with each Account and any charges of a third party on whose behalf we bill. Payment of all charges is due and will be charged to your credit card upon your receipt of an invoice. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, we may make reasonable adjustments and/or prorations. If your Account is a qualified business account and is approved by us in writing for corporate billing, charges will be accumulated, identified by Account identification number, and invoiced on a monthly basis. You agree that we may (at our option) accumulate charges incurred during your monthly billing cycle and submit them as one or more aggregate charges during or at the end of each cycle, and that we may delay obtaining authorization from your credit card issuer until submission of the accumulated charge(s). This means that accumulated charges may appear on the statement you receive from your credit card issuer. If DocuSign does not receive payment from your credit card provider, you agree to pay all amounts due upon demand. DocuSign reserves the right to correct any errors or mistakes that it makes even if it has already requested or received payment. Your credit card issuer's agreement governs your use of your credit card in connection with the Subscription Service, and you must refer to such agreement (not these Terms and Conditions) with respect to your rights and liabilities as a cardholder. You are solely responsible for any and all fees charged to your credit card by the issuer, bank, or financial institution including, but not limited to, membership,

overdraft, insufficient funds, and over the credit limit fees. You agree to notify us about any billing problems or discrepancies within 20 days after they first appear on your invoice. If you do not bring them to our attention within 20 days, you agree that you waive your right to dispute such problems or discrepancies. We may modify the price, content, or nature of the Subscription Service and/or your Service Plan at any time. If we modify any of the foregoing terms, you may cancel your use of the Subscription Service. We may provide notice of any such changes by e-mail, notice to you upon log-in, or by publishing them on the Site. Your payment obligations survive any termination of your use of the Subscription Service before the end of the billing cycle. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Subscriber will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by DocuSign to collect any amount that is not paid when due. DocuSign may accept any check or payment in any amount without prejudice to DocuSign's right to recover the balance of the amount due or to pursue any other right or remedy. Amounts due to DocuSign under these Terms and Conditions may not be withheld or offset by Subscriber for any reason against amounts due or asserted to be due to Subscriber from DocuSign. Unless otherwise noted and Conditions are denominated in United States dollars, and Subscriber will pay all such amounts in United States dollars. Other than federal and state net income taxes imposed on DocuSign by the United States, Subscriber will bear all taxes, duties, VAT and other governmental charges (collectively, "taxes") resulting from these Terms and Conditions or transactions conducted in relation to these Terms and Conditions. Subscriber will pay any additional taxes as are necessary to ensure that the net amounts received and retained by DocuSign after all such taxes are paid are equal to the amounts that DocuSign would have been entitled to in accordance with these Terms and Conditions as if the taxes did not exist. 11. DEPOSITS, SERVICE LIMITS, CREDIT REPORTS, AND RETURN OF BALANCES You authorize us to ask consumer reporting agencies or trade references to furnish us with employment and credit information, and you consent to our rechecking and reporting personal and/or business payment and credit history if, in our sole discretion, we so choose. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send a written notice describing the specific inaccuracy to the address provided in the Notices section below. For you to use the Subscription Service, we may require a deposit or set a service limit. The deposit will be held as a partial guarantee of payment. It cannot be used by you to pay your invoice or delayed payment. Unless otherwise required by law, deposits may be mixed with other funds and will not earn interest. We reserve the right to increase your deposit if we deem appropriate. You may request that we reevaluate your deposit on an annual basis, which may result in a partial or total refund of the deposit to you or credit to your account. If you default or these Terms and Conditions are terminated, we may, without notice to you, apply any deposit towards payment of any amounts you owe to us. After approximately 90 days following termination of these Terms and Conditions, any remaining deposit or other credit balance in excess of amounts owed will be returned without interest, unless otherwise required by law, to you at your last known address. You agree that any amounts under \$15 will not be refunded to cover our costs of closing your account. If the deposit balance is undeliverable and returned to us, we will hold it for you for one year from the date of return and, during that period, we may charge a service fee against the deposit balance. You hereby grant us a security interest in any deposit we require to secure the performance of your obligations under these Terms and

Conditions. 12. TERM AND TERMINATION The term of these Terms and Conditions for each Account begins on the date you register for an Account and continues for the term specified by the Service Plan you purchase (the "Term"). You may terminate your Account at any time upon 10 days advance written notice to DocuSign following the Notice procedures set forth in these Terms and Conditions. Unless you terminate your Account or you set your Account to not auto renew, your Service Plan will automatically renew at the end of its Term (each a "Renewal Term"), and you authorize us (without notice) to collect the then-applicable fee and any taxes for the renewed Service Plan, using any credit card we have on record for you. Service Plan fees and features may change over time. Your Service Plan for a Renewal Term will be the one we choose as being closest to your Service Plan from the prior Term. For any termination (including when you switch your Account), you will be responsible for payment of all fees and charges through the end of the billing cycle in which termination occurs. If you terminate your annual Service Plan Account within the first 30 days of the Term, you may submit written request to DocuSign following the Notice procedures set forth in these Terms and Conditions, for a full refund of the prepaid fees paid by you to DocuSign. You will be limited to one refund. You agree that termination of an annual Service Plan after the first 30 days will not entitle you to any refund of prepaid fees. You will be in default of these Terms and Conditions if you: (a) fail to pay any amount owed to us or an affiliate of ours or any amount appearing on your invoice; (b) have amounts still owing to us or an affiliate of ours from a prior account; (c) breach any provision of these Terms and Conditions; (d) violate any policy applicable to the Subscription Service; (e) are subject to any proceeding under the Bankruptcy Code or similar laws; or (f) if, in our sole discretion, we believe that your continued use of the Subscription Service presents a threat to the security of other users of the Subscription Service. If you are in default, we may, without notice to you, suspend your Account and use of the Subscription Service, withhold refunds and terminate your Account, in addition to all other remedies available to us. We may require reactivation charges to reactivate your Account after termination or suspension. The following provisions will survive the termination of these Terms and Conditions and your Account: Sections 3, 9-11, and 15-23. 13. SUBSCRIBER WARRANTIES You hereby represent and warrant to DocuSign that: (a) you have all requisite rights and authority to use the Subscription Service under these Terms and Conditions and to grant all applicable rights herein; (b) the performance of your obligations under these Terms and Conditions will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements between you and third parties; (c) you will use the Subscription Service for lawful purposes only and subject to these Terms and Conditions; (d) you are responsible for all use of the Subscription Service in your Account; (e) you are solely responsible for maintaining the confidentiality of your Account names and password(s); (f) you agree to immediately notify us of any unauthorized use of your Account of which you become aware; (g) you agree that DocuSign will not be liable for any losses incurred as a result of a third party's use of your Account, regardless of whether such use is with or without your knowledge and consent; (h) you will not use the Subscription Service in any manner that could damage, disable, overburden or impair the System, or interfere with another's use of the Subscription Service by others; (i) any information submitted to DocuSign by you is true, accurate, and correct; and (j) you will not attempt to gain unauthorized access to the System or the Subscription Service, other accounts, computer systems, or networks under the control or responsibility of DocuSign through hacking, cracking, password mining, or any other unauthorized means. 14. DOCUSIGN WARRANTIES DocuSign represents and warrants that: (a) the Subscription Service as delivered to Subscriber

and used in accordance with the Specifications will not infringe on any United States patent, copyright or trade secret; (b) the Subscription Service will be performed in accordance with the Specifications in their then-current form at the time of the provision of such Subscription Service; (c) any DocuSign Products that are software shall be free of harmful or illicit code, trapdoors, viruses, or other harmful features; (d) the proper use of the Subscription Service by Subscriber in accordance with the Specifications and applicable law in the formation of an eContract not involving any consumer will be sufficient under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Â§Â§ 7001 et seq. (the "ESIGN Act") to ESIGN Act; (e) the proper use of the Subscription Service by Subscriber in accordance with the Specifications and applicable law in the formation of an eContract involving a consumer will be sufficient under the ESIGN Act to support the validity of such formation, to the extent provided in the ESIGN Act, so long as and provided that Subscriber complies with all special requirements for consumer eContracts, including and subject to those referenced in Section 4.(f) and (g) above; and (f) DocuSign has implemented information security policies and safeguards to preserve the security, integrity, and confidentiality of eContracts and to protect against unauthorized access and anticipated threats or hazards thereto, that meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding Subscriber Information as set forth in Section 501 (b) of the Gramm-Leach-Bliley Act.

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FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. UNDER NO CIRCUMSTANCES WILL DOCUSIGN'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR SUBSCRIBER'S USE OF THE SUBSCRIPTION SERVICE (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER TO DOCUSIGN UNDER THESE TERMS AND CONDITIONS DURING THE 3 MONTHS PRECEDING THE DATE OF THE ACTION OR CLAIM. EACH PROVISION OF THESE TERMS AND CONDITIONS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES REPRESENTS AN AGREED ALLOCATION OF THE RISKS OF THESE TERMS AND CONDITIONS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY DOCUSIGN TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS AND CONDITIONS, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES IN THESE TERMS AND CONDITIONS HAVE FAILED OF THEIR ESSENTIAL PURPOSE. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation may not apply to you.

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irreparable, non-monetary injury to the disclosing party, the extent of which may be difficult to ascertain, and therefore agrees that DocuSign shall be entitled to seek injunctive relief in addition to all remedies available to DocuSign at law and/or in equity. Absent written consent of DocuSign, the burden of proving that the Confidential Information is not, or is no longer, confidential or a trade secret shall be on Subscriber.

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