

**AMENDMENT NUMBER 1 TO
THE OPERATING AND MANAGEMENT CONTRACT
BETWEEN THE CITY OF ANN ARBOR AND
WECARE DENALI LLC FOR
THE CITY OF ANN ARBOR COMPOST FACILITY**

This Amendment Number 1 (“Amendment”) is to the agreement between the City of Ann Arbor, a Michigan Municipal Corporation, with offices at 301 East Huron Street, Ann Arbor, Michigan 48107 (“City”) and WeCare Denali LLC, an Arkansas Limited Liability Company, 3308 Bernice Avenue, Russellville, Arkansas 72802 (“Contractor”) for Operation and Management of the City of Ann Arbor Compost Site at 4170 Platt Road, Ann Arbor, Michigan 48108, which is dated December 19, 2017 (“Agreement”). City and Contractor hereby agree to amend the Agreement as follows:

- 1) ARTICLE I, Section 1.01, Definitions, is amended to read as follows:

“Solid waste” shall be replaced with the word “Contamination.”

Any references to “solid waste” within the Agreement shall be replaced with the word “contamination.” This does not include references to the City’s “Solid Waste Rules and Regulations” or references to statutes like the “Solid Waste Disposal Act.”

“Direct Costs” refer to any additional labor cost plus the cost of disposal (e.g. hauling cost) for loads that are mutually determined by both the City and Contractor to be contaminated loads. Contractor’s labor rates for contamination removal are as follows: \$35/hour for laborer and \$50/hour for manager. For billing purposes, contamination removal time shall consist of the time that it takes to remove contamination from the load and place the contamination into a dumpster. If Contractor will haul the contamination to the City’s Transfer Station or to a local landfill then Contractor’s truck hauling rate is \$150/hr. Contractor shall bill in 15 minute (0.25 hour) increments. If Contractor determines that removing the contamination will take longer than 60 minutes, then Contractor shall notify City staff to get approval prior to removing any contamination.

- 2) ARTICLE II, Section 2.06, Litter Control, is amended entirely. This Section is hereby renamed Litter Abatement, and is amended to read as follows:

State law requires litter abatement and operation of the Compost Site in a manner which will limit the generation of litter to the greatest extent possible. Contractor shall maintain a clean and orderly Compost Facility. Contractor shall take all steps necessary to prevent generation and scattering of litter during processing, grinding, and screening at the Compost Facility. In addition, Contractor shall collect and dispose of any litter generated at the Compost Facility. Therefore, any fine levied against the City’s Compost Site operation for litter violations shall be promptly paid by Contractor. Contractor shall maintain a fence in areas around the perimeter of the Compost Facility where litter collects more frequently (such as in or around any designated wetland area, drain, detention pond, and next to

roadways). At a minimum, Contractor shall perform once weekly fence line inspections and litter removal. All Contractor litter control patrols shall be documented (with pictures) and records shall be maintained in a Litter Control Log for City review upon request. Contractor shall continue to maintain, at its sole cost and expense, a container on-site for litter collection and disposal. Contractor shall use a certified waste hauler to remove the litter once any dumpster is full. City staff will conduct site walk-throughs every month to inspect the Compost Facility and ensure that good housekeeping procedures are being implemented. If Contractor is notified by City staff that there is a visibly significant amount of litter beyond where material processing, grinding, and screening take place (such as in or around any designated wetland area, drain, detention pond, or next to roadways), then Contractor shall collect and dispose of that litter within ten (10) calendar days. City will specify the area of the Compost Facility where litter has accumulated and provide pictures. In the event that Contractor does not collect and dispose of the litter in the above specified timely manner after a written request to do so, the City reserves the right to withhold payment of Contractor's invoice until the litter abatement issue has been fully resolved to the City's satisfaction.

- 3) ARTICLE II, Section 2.07, shall be added to this Agreement. This Section shall be named Maintenance and Disposal of Contaminated Screened Overs. This Section shall read as follows:

Contractor maintains a "Screened Overs Storage Pile." Contractor has developed an innovative vacuum system for screening and removing contamination from these storage piles. Contractor shall place wood chips on top of these storage piles (in order to minimize litter escaping) until the contamination can be removed and it can be further processed. Contractor shall shred or otherwise re-process the overs in this pile at a reasonable frequency and then place the overs back into the windrows for further processing. Contractor shall monitor and process or dispose of the overs from the Screened Overs Storage Pile at a frequency of at least once every six (6) months. There shall be no "burned out" contaminated overs stored at the Compost Facility for longer than twelve (12) months.

Contractor and City acknowledge that, as of December 2022, there is roughly 6,000 cubic yards of legacy contaminated overs accumulated in the "burned out" screened overs storage pile from prior years, that is so contaminated with plastic that it cannot be further processed at the Compost Facility. This "burned out" screened overs storage pile represents approximately 3,000 tons of contaminated organics that both City and Contractor agree needs to be disposed of as soon as possible. The City agrees to allow Contractor to dispose of these contaminated organics at the City's Transfer Station located at 4160 Platt Road using the City's contracted solid waste rate in its agreement with the City's third-party Transfer Station Operator. Contractor will cover all hauling fees related to removing and transporting the contaminated organics from the compost facility to a permitted disposal facility. The City agrees to waive its contracted revenue share credits, consisting of "Merchant Organics Credit" (\$3.00/ton) and the "Mulch/Compost Sales Credit" (\$1.00/cubic yard) up to an amount of \$25,000 for the calendar year 2023, in exchange for Contractor's guarantee to remove, dispose and pay associated tipping fees and removal costs to dispose of 2,000 tons of the contaminated organics from the "burned out" screened overs storage pile by December 31, 2023. It is the City's understanding that Contractor intends to dispose of the 2,000 tons of contaminated organics within the second and third quarter (April through September) 2023. Contractor shall dispose of any remaining legacy

contaminated organics by December 31, 2024. Contractor shall continue to report the City's contracted revenue share credits on the monthly invoices, but these revenue share credits will not apply until after the \$25,000 amount discussed above has been reached.

- 4) ARTICLE III, Section 3.01, Life of Contract, is amended to read as follows:

The amended term of this Contract shall commence on January 30, 2023. The term of this Agreement shall be three (3) years, with an option for two 3-year extensions on the same terms and conditions. Therefore, this Agreement shall remain in effect until January 29, 2026, with the option to extend this Agreement on the same terms and conditions to January 29, 2032, unless this Agreement is terminated for breach or as provided for in ARTICLE X and ARTICLE XI of this Agreement. The option to renew shall be at the City's sole discretion, subject to agreement by the Contractor.

- 5) ARTICLE IV, Identification, Rejection, or Processing of Compostable Material Not Conforming to Solid Waste Rules and Regulations, Section 4.05(b1), shall be renamed Audits and Contamination Management for City Loads, and this section is amended to read as follows:

The City will work to minimize contamination through City-wide education programs, which may include the following: (1) Visual audits of curbside collections; (2) Curbside compost cart-tagging campaigns; (3) City-wide messaging programs through established channels (such as direct mail campaigns, educational videos, and community presentations). In addition to these education programs, City will conduct a comprehensive audit of the compost stream at a mutually agreed date and time, and at a frequency that accounts for the seasonality of the material collected (likely quarterly, but no less than annually). Contractor and City shall work together on a methodology for this comprehensive audit. The audits described above will help to confirm the type and quantity of incidental contaminants that are part of the City's compost stream. The audits will also assist the City with future education and outreach programs. One method to determine the contamination rate from audit material is by dividing the tons of audit contamination by tons of audit material processed. In preparation for an effective audit, Contractor shall immediately start to separate City and its Contracted hauler loads from all third-party loads delivered to the Compost Facility. This separation shall not exceed a two-week period.

Contractor has developed a procedure for removing and disposing of contamination from loads dropped off by City trucks. See the attached Appendix A. Contractor shall document this contamination and take pictures. Contractor shall notify City staff of contamination issues as soon as possible (within 24 hours). After verifying the Contractor's determination, the City shall arrange to dispose of the contaminated portion of the load within five (5) business days at the City's expense. City may choose to have Contractor's staff remove and dispose of the contamination, and any Direct Costs associated with such contamination removal and disposal shall be charged to the City on the City's next monthly Invoice. The procedure for notifying the City and logging contamination in Appendix A may be amended from time-to-time with mutual agreement from both City and Contractor.

As a good-faith gesture to expedite the removal of incidental contamination that is discovered in City loads, City will place two 8 cubic yard dumpsters on-site at the Compost

Facility for a 12-month trial period for the collection and disposal of incidental contamination identified in City loads only. At the end of the trial period, City will re-evaluate the need to have a dumpster on-site at the Compost Facility. City will arrange (at the City's expense) to dispose of the contaminated portions of the loads once the City is notified by Contractor's staff that the two 8 cubic yard dumpsters are full, or if the dumpsters are not continued, then within five (5) business days. City retains the right to remove this dumpster from the Compost Facility at any time. Contractor shall dispose of third-party contamination in different dumpsters/containers. Third-party contamination shall not be placed in the same dumpsters/containers as contamination from City loads.

- 6) ARTICLE IV, Identification, Rejection, or Processing of Compostable Material Not Conforming to Solid Waste Rules and Regulations, Section 4.05(e), is amended to add the following language to the end of the paragraph:

City requires a minimum of six (6) months' notice if Contractor will change to a different certification for "compostable manmade material."

- 7) ARTICLE IV, City of Ann Arbor Programs, Section 4.08(a), is amended to read as follows:

"Free Compost Pick-Up Program:" The City has developed a compost program to provide free finished compost and/or mulch to residents of the City, not to exceed 1,000 cubic yards of finished compost and/or mulch per year. Contractor will make available to the City the finished compost and/or mulch required by the City for this program. The finished compost and/or mulch will be distributed at the Compost Site on Saturday mornings in the Spring, unless the City chooses a different method of distribution to be mutually agreed upon by the Contractor. City will provide a schedule to Contractor (via email) and to the public (through the City's website and social media) by April 1st of each year. If compost and/or mulch distribution is located at the Compost Site, then the resident distribution area will be attended by Contractor personnel at all times during the specified distribution hours. Residents will be limited to one (1) cubic yard of free finished compost and/or mulch per household per year and will be responsible for shoveling and loading the finished compost and mulch with their own equipment and containers. Residents will be required to scale in at the Scalehouse and show identification as requested by the City. If residents do not pick up the entire 1,000 cubic yards of finished compost and/or mulch, the Contractor agrees that the City may pick up and use for City purposes the remainder of the 1,000 cubic yards of finished compost and/or mulch at no charge.

- 8) ARTICLE IV, City of Ann Arbor Programs, Section 4.08(b), is amended to read as follows:

"Free Drop-Off of Compostable Material Program:" The City has developed a resident program that allows for residents to deliver up to one (1) cubic yard per day of Compostable Material at no charge to the resident. Contractor will bill up to one cubic yard of material dropped off to the City at the City's Yard Waste and Leaves Tip Rate (\$/ton). For purposes of billing the City, Contractor shall convert the cubic yard to tons using a mutually agreed conversion

factor for converting from volume (cubic yards) to weight (tons). Any additional yardage shall be billed to the resident, at the Contractor's current established rate (\$/cubic yard). Contractor shall provide the City with a monthly report and analysis showing the ticket number to establish the transaction, quantity delivered, and revenues collected.

- 9) ARTICLE IV, City of Ann Arbor Programs, Section 4.08(c), is amended to read as follows:

"Free Leaf Drop-Off Program:" The City has developed a resident program that allows for leaves to be delivered to the Compost Site by Ann Arbor residents or their contracted landscapers at no charge to the Ann Arbor resident or landscaper. This program shall take place during a 90-day period in the Fall each year. City will provide a schedule to Contractor (via email) and to the public (through the City's website and social media) by the first week of October each year for the annual Free Leaf Drop-Off Program. Contractor shall bill City at the City's Yard Waste and Leaves Tip fee rate (\$/ton) for leaves delivered through this program. City will develop a process for contracted landscapers to follow in order to drop off leaves from Ann Arbor residents for free. All resident addresses must be verified. Landscapers must be in good standing (i.e. no unpaid invoices) with the City's Compost Facility Contractor in order to participate in this Free Leaf Drop-Off Program. Contractor shall provide the City with a list of any contracted landscapers that have been "banned" from the Compost Facility for non-payment of invoices by October 1 of each year.

- 10) ARTICLE V, Section 5.02, Payments to Contractor, is amended to add the following language to the end of the paragraph:

City will provide the monthly electronic scale report for all compost transactions at the City's Compost Facility via email by the 5th day of each month and Contractor will provide their invoice by the 20th day of each month. Contractor must be aware that the City's Fiscal Year ends on June 30th of each year. Therefore, Contractor may be required to submit their June invoice earlier than July 20th.

- 11) ARTICLE V, Section 5.04, Information to be Included with Invoices, is amended to add the following language:

Contractor shall analyze the monthly electronic scale reports for billing purposes. Contractor shall submit a summarized copy of showing calculations used to bill the City and a log of residential transactions and sales. Contractor shall keep a copy of scanned weight tickets for all residential drop-off transactions at the City's Compost Site.

Contractor shall meet with the City (virtually or in person) monthly at a mutually agreed time in order to discuss the current state of the Compost Program including, but not limited to items such as recent invoices, compost site operations, public outreach and education efforts on behalf of the City, and any other issues and concerns.

- 12) ARTICLE X, Section 10.04, Performance Bond, is amended to read as follows:

Prior to commencing work under this Agreement, Contractor shall obtain and provide a

Performance Bond to the City to secure performance of the services under the Agreement, and the bond, or such replacement bond as deemed acceptable to the City, shall remain valid and in effect during the duration of the Agreement on an annual basis. The Performance Bond shall be executed on a form attached as Appendix B – Performance Bond Form in a manner and by a surety company duly authorized to issue performance bonds in Michigan and satisfactory to the City Attorney. The City and Contractor agree that the amount of the Performance Bond shall be \$92,158 for the first year of this Agreement, and then \$185,766 for each additional year of this Agreement (which is the approximate equivalent to 6 months of estimated service fees for the first year). Contractor shall submit the proof of Performance Bond or “Continuation Certificate” for the Performance Bond to the City by December 31st of each year.

13) ARTICLE XIV, Section 14.06, Notices, is amended to read as follows:

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

WeCare Denali LLC
President
3308 Bernice Avenue
Russelville, AR 72802

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Public Services Area Administrator
301 E. Huron St.
Ann Arbor, Michigan 48104

With a copy to: The City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

14) EXHIBIT C, Schedule of Fees and Rates, is amended to read as follows:

For the first year of this Amendment’s term (January 29, 2023 to January 28, 2024), City agrees to pay Contractor \$28.00/ton for the “City Yard Waste and Leaves Tip Fee.” The “Merchant Organics Credit” shall remain \$3.00/ton and the “Mulch/Compost Sales Credit”

shall remain \$1.00/cubic yard. For each additional Contract Year, the annual tipping fees and revenue share credits shall be adjusted annually for inflation. Adjustment for inflation shall be limited to the percentage change in the Consumer Price Index (CPI), including energy, for the previous contract year, or 6%, whichever is less. For the purposes of this Agreement, CPI is defined as the Midwest Region Consumer Price Index for Statistics (BLS), United States Department of Labor. The change in CPI, will be calculated in January for the previous twelve-month period and will be effective as of January 29th. The change in CPI shall be calculated each subsequent January and will be in effect for billings from February through the following January.

All terms, conditions, and provisions of the Agreement, unless specifically amended above, shall apply to this Amendment and are made a part of this Amendment as though expressly rewritten, incorporated, and included herein.

City and Contractor agree that for this Amendment and any documents related to the Agreement: 1) signatures may be delivered electronically in lieu of an original signature; 2) to treat electronic signatures as original signatures that bind them; and 3) signatures may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

This Amendment to the Agreement shall be binding on the Parties' heirs, successors, and assigns. This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

[SIGNATURE PAGE FOLLOWS]

FOR WECARE DENALI, LLC:

By: _____

Name: _____

Title: _____

Date: _____

FOR CITY OF ANN ARBOR:

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Date: _____

Approved as to substance:

Milton Dohoney Jr., City Administrator

Brian Steglitz, Public Services Area Administrator

Approved as to form and content:

Atleen Kaur, City Attorney

APPENDIX A

CONTAMINATED LOAD LOG

Contamination Load Sheet									
Date:									
Time:									
City or Company Name:									
Truck # or License Plate #:									
Approximate Volume of the Entire Load (yd³):									
Approximate Volume of Contamination Removed (yd³):									
Number of Pictures Taken:									
*** Pics before removal, after removal, and pics of contaminants removed									
Description of Contaminants That Were Removed:									
Duration of Time to Remove Contamination (min):									
Process:									
Fill in sheet above for all contaminated loads.									
If it came from a City truck:									
Take pictures of the visible contamination and fill out this sheet.									
Notify the City's Solid Waste Contract Specialist via email (copying the City's Resource Recovery Manager) as soon as possible.									
If the estimated time to remove contamination is longer than 60 minutes, contact City staff for approval BEFORE removing contamination from load.									
Remove the contamination and place it into City dumpsters.									
If it came from Merchant Customer:									
Remove contamination and place contamination in Denali dumpsters.									
Save Sheet and Pictures for future reference.									
*** If the load is contaminated beyond what can be removed- Contact Denali Manager/Merchant Customer.									

APPENDIX B

PERFORMANCE BOND FORM

- (1) _____(referred to as "Principal"), and _____, a corporation duly authorized to do business in the State of Michigan (referred to as "Surety"), are bound to the City of Ann Arbor, Michigan (referred to as "City"), for \$ _____, the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by this bond.
- (2) The Principal has entered a written Contract with the City entitled _____
_____, and this bond is given for that Contract in compliance with Act No. 213 of the Michigan Public Acts of 1963, as amended, being MCL 129.201 et seq.
- (3) Whenever the Principal is declared by the City to be in default under the Contract, the Surety may promptly remedy the default or shall promptly:
- (a) complete the Contract in accordance with its terms and conditions; or
 - (b) obtain a bid or bids for submission to the City for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the City, and make available, as work progresses, sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which Surety may be liable hereunder, the amount set forth in paragraph 1.
- (4) Surety shall have no obligation to the City if the Principal fully and promptly performs under the Contract.
- (5) Surety agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying it shall in any way affect its obligations on this bond, and waives notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work, or to the specifications.
- (6) Principal, Surety, and the City agree that signatures on this bond may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this bond. This bond may be executed and delivered by facsimile and upon such delivery, the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party.

SIGNED AND SEALED this _____ day of _____, 202_.

(Name of Surety Company)

(Name of Principal)

By _____
(Signature)

By _____
(Signature)

Its _____
(Title of Office)

Its _____
(Title of Office)

Approved as to form:

Atleen Kaur, City Attorney

Name and address of agent:

