

First Modification of
Memorandum of Understanding Between North Texas Municipal Water District,
Cities of Allen, Frisco, McKinney, Plano, and Richardson
Regarding
Amended and Restated Regional Composting Program Interlocal Agreement

THIS FIRST MODIFICATION OF Memorandum of Understanding (hereinafter "First Modification") is by and between the **NORTH TEXAS MUNICIPAL WATER DISTRICT** (hereinafter "NTMWD") and the **CITIES OF ALLEN, FRISCO, MCKINNEY, PLANO, and RICHARDSON** (hereinafter, each referred to as a "Member City" and collectively as "Member Cities").

WITNESSETH:

WHEREAS, NTMWD and Member Cities entered into that certain "Memorandum of Understanding Between North Texas Municipal Water District, Cities of Allen, Frisco, McKinney, Plano, and Richardson Regarding Amended and Restated Regional Composting Program Interlocal Agreement" effective on April 28, 2016 (hereinafter "MOU") to enhance the existing long-term regional composting program with continued, cost effective composting services ("Program") that provide for efficient processing and transport of yard trimming materials from a NTMWD compost program facility site and back to market as finished product (currently branded Texas Pure Products ("Products")), thereby increasing water conservation and water quality in local creeks, streams, and lakes through reducing storm water impacts; and

WHEREAS, NTMWD and Member Cities desire to amend such MOU in certain respects as set forth herein in this First Modification.

NOW THEREFORE, the MOU is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the MOU shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency between the provisions set forth in this First Modification and the MOU, priority of interpretation shall be in the following order: First Modification, MOU. In consideration of the foregoing, and for other good and valuable consideration, the parties hereto agree as follows:

I.

Beginning on the effective date of this First Modification and continuing through the remaining term of the MOU, **Section I. NTMWD Responsibilities, paragraph 3** is hereby modified to read in its entirety as follows:

"3. Within sixty (60) days after NTMWD receives a compost rebate from the Texas Commission on Environmental Quality ("**TCEQ**"), NTMWD will deliver the compost rebate, if any, to Plano to be used by Plano solely as a revenue source for offsetting the costs associated with operating the Program. However, for the TCEQ fiscal quarter beginning on September 1, 2023 and ending on November 30, 2023, the compost

rebate earned during the month of September 2023 will be distributed to the Member Cities based upon each Member Cities' percentage (by weight per the monthly compost invoice) delivered to one of NTMWD's compost program facilities, such facilities being set forth in the Amended Agreement, of "Acceptable Material" as that term is defined in the Amended Agreement."

II.

Beginning on the effective date of this First Modification and continuing through the remaining term of the MOU, **Section II. Member City Responsibilities, sub-section A. Plano, paragraph 2**, is hereby modified to read in its entirety as follows:

"2. Plano will maintain and advance operational efficiencies during the term of the Amendment to insure long-term financial sustainability. In addition, Plano will provide to the Member Cities the "Profit-Revenue Share" component as set forth in the Amended Agreement to provide additional financial benefits to the Member Cities."

III.

Beginning on the effective date of this First Modification and continuing through the remaining term of the MOU, **Section II. Member City Responsibilities, sub-section B. All Member City (including Plano), paragraph 1**, is hereby modified to read in its entirety as follows:

"1. Except as described in this section, the Member Cities at "Full Participation" agree to ensure all Acceptable Material, as defined in the Amended Agreement, will be collected as part of each Member City's municipal collection program and will be delivered to an NTMWD compost program facility, said facilities being as set forth in the Amended Agreement. "Full Participation," as used in this section, means the Member City utilizes the Custer Road Facility for both deposits of curbside collected yard debris and residential drop off. In addition, the Member Cities agree to ensure all collected Acceptable Material delivered to an NTMWD compost program facility are free of all non-compostable materials including but not limited to: plastic, glass, metal, tape, nylon twine/cord, rock, brick or dirt. A Member City shall not be required to deliver all Acceptable Material to an NTMWD compost program facility in the following circumstances:

- a. During and immediately following Emergency Surges. "Emergency Surges" are defined as short periods of excessive generation of compostable material following unusual events, such as, by way of example only, large storms, such that it is impracticable to timely accept or process the compostable material and impracticable for the Member Cities to store the compostable material until

- Plano can accept the material. In the event that a Member City is affected by an Emergency Surge, the Member City affected shall notify NTMWD and Plano as soon as practicable, and shall provide to NTMWD and Plano within three (3) business days following said notice, a plan for disposing of the excess compostable material, which may include delivering the excess compostable material to a non-NTMWD facility, and for returning to regular delivery of Acceptable Material as soon as practicable.
- b. When Plano is not able to accept Acceptable Material at the NTMWD compost program facility nearest the Member City because that NTMWD compost program facility has reached its maximum daily waste acceptance rate, as determined by NTMWD, for that day.
 - c. If a Member City chooses to Participate Partially or withdraws from the Program, the Member City must provide advance written notice to Plano and NTMWD. In order to withdraw from the Program, or to Partially Participate in the Program, the Member City shall provide Plano and NTMWD with at least ninety (90) days' advance written notice. In the event a Member City withdraws from the Program or Partially Participates in the Program, that Member City may re-enter the Program by providing Plano and NTMWD at least one hundred twenty (120) days' advance written notice, to allow Plano to resource accordingly. "Partial Participation" means that only the Member City's residents utilize the Custer Road Facility, and only for drop off of yard debris.
 - i. Beginning on the Effective Date of this First Modification, and ending on December 31, 2023, notwithstanding the requirement in Section II. Member City Responsibilities, sub-section B, paragraph 1 to ensure that all Acceptable Material, as defined in the Amended Agreement, will be collected as part of each Member City's municipal collection program and will be delivered to an NTMWD compost program facility, the City of McKinney shall be allowed, but not required, to deliver some, all, or none, of its Acceptable Material to be delivered to an NTMWD compost program facility.
 - ii. Beginning on January 1, 2024, McKinney shall be a Partial Participant in the Program with the right of re-entry into the Program as hereinabove provided.

IV.

The following miscellaneous provisions are a part of this First Modification:

1. Except as specifically amended herein, all provisions of the MOU shall remain unchanged and in full force and effect and exist as if set forth herein in their entirety.
2. In the event of any conflict or inconsistency between the MOU and this First Modification, the terms of this First Modification shall control.
3. All terms defined in the MOU shall have the same meaning in this First Modification.
4. The effective date of this First Modification shall be October 1, 2023, even if fully executed after October 1, 2023.

IN WITNESS WHEREOF, the parties hereto acting under the authority of their respective governing bodies have caused this First Modification to be duly executed in multiple counterparts, each of which shall constitute an original.

NORTH TEXAS MUNICIPAL WATER DISTRICT

By: _____
Jennafer P. Covington
Executive Director/General Manager

Date: _____

CITY OF ALLEN, TEXAS

By: _____
Eric Ellwanger
City Manager

Date: _____

APPROVED AS TO FORM:

PETER G. SMITH, CITY ATTORNEY

CITY OF FRISCO, TEXAS

By: _____
Wesley S. Pierson
City Manager

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF MCKINNEY, TEXAS

By: _____
Paul Grimes
City Manager

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF PLANO, TEXAS

By: _____
Mark D. Israelson
City Manager

Date: _____

APPROVED AS TO FORM:

PAIGE MIMS, CITY ATTORNEY

CITY OF RICHARDSON, TEXAS

By: _____
Don Magner
City Manager

Date: _____

APPROVED AS TO FORM:

PETER G. SMITH, CITY ATTORNEY

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2023 by **JENNAFER P. COVINGTON**, Executive Director/General Manager of the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, on behalf of said district.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2023 by **ERIC ELLWANGER**, City Manager of **CITY OF ALLEN, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2023 by **WESLEY S. PIERSON**, City Manager of **CITY OF FRISCO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me on the ____ day of _____, 2023 by **PAUL GRIMES**, City Manager of **CITY OF MCKINNEY, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
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COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2023 by **MARK D. ISRAELSON**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of _____, 2023 by **DON MANGER**, City Manager of **CITY OF RICHARDSON, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas