

**First Modification of
Interlocal Cooperation Agreement
Between North Texas Municipal Water District and the City of Plano, Texas
for Amended and Restated Regional Composting Program**

THIS FIRST MODIFICATION (hereinafter "First ILA Modification") of that certain "Interlocal Cooperation Agreement Between North Texas Municipal Water District and the City of Plano, Texas for Amended and Restated Regional Composting Program" effective April 28th, 2016 (hereafter, "Agreement") is by and between the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, a political subdivision of the State of Texas, (hereinafter referred to as "NTMWD" or "Owner") and the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation (hereinafter referred to as "Plano" or "Contractor"). Individually, NTMWD and Plano may be referred to as "Party" and collectively, NTMWD and Plano may be referred to as "Parties."

WITNESSETH:

WHEREAS, NTMWD and Plano entered into the Agreement on April 28, 2016 for a regional composting program (hereinafter "Program"); and

WHEREAS, Plano, NTMWD and the other Member Cities are entering into a certain "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" (the "MOU Amendment") contemporaneously with this First ILA Modification; and

WHEREAS, the Parties desire to amend the Agreement in certain respects as set forth herein in this First ILA Modification.

NOW THEREFORE, the Agreement is incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the Agreement 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 ILA Modification and the Agreement, priority of interpretation shall be in the following order: First ILA Modification, then Agreement. 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 ILA Modification and continuing through the remaining term of the Agreement, **Section VI. PAYMENT/FUNDING** is hereby modified to read in its entirety as follows:

**"VI.
PAYMENT/FUNDING**

1. Owner agrees to allow Contractor to establish a yearly disposal rate based on the anticipated tonnage of Acceptable Materials to be delivered by the Member Cities at Full Participation or Partial Participation (including

each City, each business contracted with a Member City to haul waste, or each resident of each Member City) to the Custer Road Facility, taking into consideration the estimated expenses for the fiscal year and the TCEQ Compost Refund to be provided by Owner to Contractor as follows:

i. For Fiscal Year 2023 – 2024, the fee for Acceptable Materials shall be \$35.80 per ton for the full participation of all five Member Cities or \$37.95 per ton for full participation of less than all five Member Cities. Full participation means the Member City utilizes the Custer Road Facility for both deposits of curbside collected yard debris and residential drop off.

ii. For subsequent fiscal years, the disposal rate set out in Subsection (i) above shall be adjusted annually to meet the anticipated financial needs of the Program, but will not exceed the greater of three and one-half percent (3.5%) of that prior year's rate or the percentage increase in the September Consumer Price Index for All Urban Consumers in the Dallas Fort Worth metropolitan area ("CPI-U") as established by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor governmental agency, from the date of the last adjustment or the Effective Date (in the case of the first annual adjustment).

2. For Fiscal Year 2023 – 2024, Owner will pay Contractor seven dollars and fifty cents (\$7.50) per ton for each ton of Food Waste delivered to the 121 RDF Facility from Allen, Frisco, McKinney and Richardson collections. For subsequent fiscal years, the disposal rate shall be adjusted annually to meet the financial needs of the Program, but will not exceed the greater of three and one-half percent (3.5%) of that prior year's rate or the percentage increase in the September Consumer Price Index for All Urban Consumers in the Dallas Fort Worth metropolitan area ("CPI-U") as established by the Bureau of Labor Statistics of the U.S. Department of Labor, or any successor governmental agency, from the date of the last adjustment or the Effective Date (in the case of the first annual adjustment).

3. Owner shall make payment to Contractor for both the disposal of Acceptable Materials and Food Waste within thirty (30) days of Owner's receipt of an acceptable invoice from Contractor. All fees and costs paid to Contractor by Owner in accordance with Sections 1 through 3 shall be paid from fees collected from Allen, Frisco, McKinney, and Richardson for delivery of Acceptable Materials.

4. Owner agrees to allow Contractor to charge separate tipping fees to individual commercial businesses (i.e., waste & recycling haulers, landscape contractors, and other generators of Acceptable Materials and Food Waste) that deliver material to either the Custer Road Facility or the 121 RDF Facility for composting, which supports Contractor with material and revenue until such time as the Member Cities are supplying all necessary volumes of

material. Additional materials from non-Member Cities will be adjusted and reduced when necessary to prevent operational limitations to all Member Cities material. At no time will these tipping fees be less than the Member Cities' fees, unless it is for Food Waste.

5. Owner agrees to track the tonnage of ground material and compost overs material that Contractor disposes of into the working face of the 121 RDF landfill on an annual basis. Owner will invoice Contractor for disposal of ground material and compost overs material that Contractor disposes of into the working face of the 121 RDF landfill at the end of Owner's fiscal year as follows:

i. For years in which Contractor disposes of greater than ten percent (10%) of its ground material and compost overs at the 121 RDF landfill, the cost for disposal of the material charged using Owner's one-half ton accounting for material delivered.

ii. For years in which Contractor disposes of less than or equal to ten percent (10%) of its ground material and compost overs at the 121 RDF landfill Owner shall not charge for disposal of the ground material and compost overs.

6. In accordance with Section I, paragraph 3 of the MOU Amendment, Owner shall distribute the TCEQ Compost Refund to Plano to be used by Plano solely as a revenue source for the Program. This Section VI.6 shall survive termination of this Amended Agreement.

7. Contractor agrees to provide the "Profit/Revenue" share component described in this Section VI.7, to financially benefit the Member Cities for supplying Acceptable Materials, improving operational challenges and quality control aspects, supporting promotional and educational awareness of the Products throughout their communities, purchasing and applying the Products, and advocating the Products as the preferred compost and mulch related products. Each December following the Effective Date, Contractor will provide to Owner and the Member Cities an annual Regional Composting Program Profit/Revenue Share Report (hereinafter referred to as "Profit/Revenue Report") that documents the expenses, revenues and/or profit or loss per each Fiscal Year (October 1st to September 30th). Upon final audit of the Contractor's individual fiscal year budget, the Profit/Revenue Report will be updated to reflect the annual data and a cumulative total for the length of the Amended Agreement. On or prior to December 31 of the following year the profit (if any) will be distributed between the participating member cities on a pro-rata basis, based upon each Member Cities' percentage of Acceptable Material (by weight) delivered to the regional composting program for the fiscal year in which the profit was generated. The Member Cities shall be a third-party beneficiary of this Amended Agreement with respect to this Section VI.7. This Section VI.7 shall survive termination of this Amended Agreement.

8. Owner and Contractor agree that the continuation of this Amended Agreement beyond the close of any given fiscal year of either Owner or Contractor shall be subject to approval by the governing body of each party. In the event that the governing body of either Owner or Contractor does not approve the appropriation of funds for this Amended Agreement, this Amended Agreement shall terminate at the end of the fiscal year for which funds were appropriated and the Parties shall have no further obligations hereunder other than those specifically stated to survive termination of this Amended Agreement.”

II.

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

1. All terms defined in the Agreement, the MOU, and the MOU Amendment, shall have the same meaning in this First ILA Modification.
2. The effective date of this First ILA 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 ILA 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 PLANO, TEXAS

By: _____
Mark D. Israelson
CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Paige Mims, 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 **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