

Second 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 SECOND MODIFICATION OF Memorandum of Understanding (hereinafter "Second MOU 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").

W I T N E S S E T H:

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, the MOU provides it was entered into by and between NTMWD and the Member Cities in conjunction with and in support 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 (the "Agreement") and that the term of the MOU is intended to extend throughout the term of the Agreement, as amended; and

WHEREAS, NTMWD and Member Cities entered into a First Modification of the MOU effective October 1, 2023 ("First MOU Modification"); and

WHEREAS, NTMWD and Member Cities desire to further amend such MOU as set forth in this Second MOU Modification.

NOW THEREFORE, the MOU and First MOU Modification are incorporated herein as if written word for word. Except as provided below, all other terms and conditions of the MOU and First MOU Modification shall remain unchanged and shall remain in full force and effect. In the event of any conflict or inconsistency, priority of interpretation shall be in the following order: Second MOU Modification, First MOU Modification, MOU. In consideration of the foregoing, and for other good and valuable consideration, NTMWD and Member Cities agree as follows:

I.

All of the recitals set forth above are hereby approved and incorporated into the body of this Second MOU Modification for all purposes allowed by law as if copied and restated in their entirety.

II.

Beginning on the effective date of this Second MOU Modification and continuing through the remaining term of the MOU, **Section II. Member City Responsibilities, sub-section B. All Member Cities (including Plano)**, of the MOU as previously modified by the First MOU Modification, is hereby further modified to add the following new subparagraphs 4 and 5 to read as follows:

“4. At the conclusion of each fiscal year, if total revenues exceed total expenditures for the Program, the surplus funds shall be calculated by Plano and reported to the Member Cities. Plano will report the year-end surplus amount along with recommended options for the use of the year-end surplus amount, which options may include, but are not necessarily limited to, applying the year-end surplus amount as a credit toward future tipping fees; establishing or adding to reserve balances for the Program to offset potential future deficits; reimbursement to Plano of any shortfalls described in subparagraph 5, hereinbelow; or other purposes as unanimously approved by the Member Cities. If the Member Cities do not reach a unanimous decision, then Plano will return the year-end surplus amounts to the Member Cities on a pro rata basis, based on each Member City's percentage of Acceptable Material (by weight) delivered to the Facility for that fiscal year less any reimbursements due to Plano through Subparagraph 5, below.

5. At the conclusion of each fiscal year, if total expenditures exceed total revenues for the Program, Plano will calculate the deficit and allocate the amount of said shortfall among the Member Cities on a pro-rata basis, based on each Member City's Acceptable Material (by weight) delivered to the Facility for that fiscal year. Subject to the availability of funds from current revenues, each Member City shall reimburse Plano within 90 days of receipt of invoice for their proportionate share of any shortfall for said fiscal year. Failure of any Member City to reimburse Plano for that Member City's proportionate share of any shortfall for a particular fiscal year due to lack of availability of funds from current revenues is not a breach of the Second MOU Modification. However, if a Member City fails to reimburse Plano for that Member City's proportionate share of any shortfall for a particular fiscal year then any future year-end surplus that is otherwise payable to said Member City in a future year shall first be applied directly to reimbursing Plano for any shortfall the Member City did not previously reimburse to Plano and the remaining balance thereof, if any, paid to the Member City in accordance with Subparagraph 4, above.”

III.

1. All terms defined in the MOU and First MOU Modification shall have the same meaning in this Second MOU Modification.
2. The effective date of this Second MOU Modification shall be October 1, 2025, even if fully executed after October 1, 2025.
3. NTMWD and Member Cities agree to participate in and complete negotiations by September 30, 2028 for any future operational changes to the Program. Such future operational changes may include, but are not limited to, whether Plano will continue service as NTMWD's

composting contractor, and the fee structure for the collection and delivery of Acceptable Materials.

[Signatures begin on following page.]

NTMWD and Member Cities, acting under the authority of their respective governing bodies, have caused this Second MOU Modification to be duly executed in multiple counterparts, each of which shall constitute an original.

NORTH TEXAS MUNICIPAL WATER DISTRICT

Date: _____

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

CITY OF ALLEN, TEXAS

Date: _____

By: _____
Eric Ellwanger
City Manager

APPROVED AS TO FORM:

PETER G. SMITH, CITY ATTORNEY

CITY OF FRISCO, TEXAS

Date: _____

By: _____
Wesley S. Pierson
City Manager

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF MCKINNEY, TEXAS

Date: _____

By: _____
Paul Grimes
City Manager

APPROVED AS TO FORM:

Mark S. Houser, CITY ATTORNEY

CITY OF PLANO, TEXAS

Date: _____

By: _____
Mark D. Israelson
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

CITY OF RICHARDSON, TEXAS

Date: _____

By: _____
Don Wagner
City Manager

APPROVED AS TO FORM:

Peter G. Smith, CITY ATTORNEY