



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY					
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory					
Council Meeting Date:		March 14, 2016			
Department:		Public Works			
Department Head		Gerald P. Cosgrove, P.E.			
Agenda Coordinator (include phone #): Tiffany Stephens (972) 769-4264					
CAPTION					
A Resolution of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas, for Amended and Restated Regional Composting Program; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.					
FINANCIAL SUMMARY					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2015-16 through 2025-26	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(S): SUSTAINABILITY & ENVIRONMENTAL SERVICES FUND					
<p>COMMENTS: This item, which has no financial impact, amends the interlocal agreement between the North Texas Municipal Water District and the City of Plano for the Regional Composting Program for the next ten (10) years with the option of one additional ten (10) year term.</p> <p>STRATEGIC PLAN GOAL: Working with other governmental entities to provide services to Plano residents relates to the City's goal of Financially Strong City With Service Excellence and Partnering For Community Benefit.</p>					
SUMMARY OF ITEM					
The City of Plano entered into an agreement with the North Texas Municipal Water District to provide composting services at the District's landfill in Melissa, Texas in 2003. That agreement, which has been amended three times, expires on April 30, 2016. This agreement extends the contract for ten years and allows for an additional ten year renewal.					
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies		
Interlocal Cooperation Agreement					

A Resolution of the City of Plano, Texas, approving the terms and conditions of an Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas, for Amended and Restated Regional Composting Program; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.

WHEREAS, the Interlocal Cooperation Act (the “Act”), codified as Chapter 791, Texas Government Code, authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, the North Texas Municipal Water District (“NTMWD”) currently operates and maintains a Regional Solid Waste Disposal System, which includes facilities for receiving, transporting and disposal of solid waste for the cities of Allen, Frisco, McKinney, Plano, and Richardson, Texas (hereinafter referred to as “Member Cities”); and

WHEREAS, collecting, transporting, sorting, grinding, mulching and composting of landscape materials are governmental functions beneficial to the health, safety and welfare of the citizens of the North Texas regional area; and

WHEREAS, NTMWD and Member Cities desire to continue the Regional Composting Program for the benefit of and utilization by the Member Cities; and

WHEREAS, NTMWD and Plano entered into an “Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program”, (the “Base Agreement”) effective October 24, 2003; and

WHEREAS, pursuant to Section II of the Base Agreement, the initial term of the Base Agreement was ten (10) years (the “Initial Term”); and

WHEREAS, also pursuant to Section II of the Base Agreement, the Base Agreement may be renewed for two additional five (5) year terms unless terminated earlier by either Party; and

WHEREAS, the Initial Term was to expire on October 23, 2013; and

WHEREAS, a “First Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “First Amendment”) was executed and renewed the Base Agreement from October 24, 2013 through October 23, 2015; and

WHEREAS, a “Second Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “Second Amendment”) was executed and renewed the Base Agreement from October 24, 2015 through January 22, 2016; and

WHEREAS, a “Third Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “Third Amendment”) was executed and renewed the Base Agreement through April 30, 2016; and

WHEREAS, NTMWD and the Member Cities are mutually interested in extending the present Regional Composting Program beyond April 30, 2016; and

WHEREAS, Plano and NTMWD desire to enter into this Amended and Restated Regional Composting Program (the “Amended Agreement”), attached hereto as Exhibit “A” pursuant to the Act, and other applicable statutes, contracts pursuant thereto, and Charter provisions; and

WHEREAS, NTMWD and the Member Cities desire to enter into a separate Memorandum of Understanding (the “MOU”) to enhance program support between NTMWD and the Member Cities through specific actions required by NTMWD and each of the Member Cities supporting the Amended Agreement; and

WHEREAS, Plano and NTMWD have current revenues available and allocated to perform the functions described herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS THAT:

Section I. The terms and conditions of the Interlocal Cooperation Agreement having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizen, are hereby in all things approved.

Section II. The City Manager or his authorized designee, is hereby authorized to execute the agreement and any other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this 14th day of March, 2016.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

INTERLOCAL COOPERATION AGREEMENT BETWEEN
NORTH TEXAS MUNICIPAL WATER DISTRICT AND
THE CITY OF PLANO, TEXAS FOR
AMENDED AND RESTATED REGIONAL COMPOSTING PROGRAM

THIS AGREEMENT, is made and entered into 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 a “Party” and collectively, NTMWD and Plano may be referred to as “Parties.”

WHEREAS, the Interlocal Cooperation Act (the “Act”), codified as Chapter 791, Texas Government Code, authorizes any local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act; and

WHEREAS, NTMWD currently operates and maintains a Regional Solid Waste Disposal System, which includes facilities for receiving, transporting and disposal of solid waste for the cities of Allen, Frisco, McKinney, Plano, and Richardson, Texas (hereinafter referred to as “Member Cities”); and

WHEREAS, collecting, transporting, sorting, grinding, mulching and composting of landscape materials are governmental functions beneficial to the health, safety and welfare of the citizens of the North Texas regional area; and

WHEREAS, NTMWD and Member Cities desire to continue the Regional Composting Program for the benefit of and utilization by the Member Cities; and

WHEREAS, NTMWD and Plano entered into an “Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program”, (the “Base Agreement”) effective October 24, 2003; and

WHEREAS, pursuant to Section II of the Base Agreement, the initial term of the Base Agreement was ten (10) years (the “Initial Term”); and

WHEREAS, also pursuant to Section II of the Base Agreement, the Base Agreement may be renewed for two additional five (5) year terms unless terminated earlier by either Party; and

WHEREAS, the Initial Term was to expire on October 23, 2013; and

WHEREAS, a “First Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “First Amendment”) was executed which renewed the Base Agreement from October 24, 2013 through October 23, 2015; and

WHEREAS, a “Second Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “Second Amendment”) was executed which renewed the Base Agreement from October 24, 2015 through January 22, 2016; and

WHEREAS, a “Third Amendment to Interlocal Cooperation Agreement between North Texas Municipal Water District and the City of Plano, Texas for Regional Composting Program” (the “Third Amendment”) was executed which renewed the Base Agreement through April 30, 2016; and

WHEREAS, NTMWD and the Member Cities are mutually interested in extending the present Regional Composting Program beyond April 30, 2016; and

WHEREAS, Plano and NTMWD desire to enter into this Amended and Restated Regional Composting Program (the “Amended Agreement”) pursuant to the Act, and other applicable statutes, contracts pursuant thereto, and Charter provisions; and

WHEREAS, NTMWD and the Member Cities desire to enter into a separate Memorandum of Understanding (the “MOU”) to enhance program support between NTMWD and the Member Cities through specific actions required by NTMWD and each of the Member Cities supporting the Amended Agreement; and

WHEREAS, Plano and NTMWD have current revenues available and allocated to perform the functions described herein.

NOW THEREFORE, for mutual consideration hereinafter stated, Owner and Contractor agree as follows:

**I.
EFFECTIVE DATE**

The Amended Agreement shall be effective on the date of the last signature hereto (the “Effective Date”). The Base Agreement, First Amendment, Second Amendment, and Third Amendment shall be of no further force and effect as of the Effective Date.

**II.
TERM**

This Amended Agreement shall be effective for a period of ten (10) years from the Effective Date. Thereafter, upon mutual agreement, in writing, of the Parties, this Amended Agreement may be renewed for one (1) additional ten (10) year term unless terminated earlier in accordance with Section VII.

III. DUTIES OF PARTIES

A. General Duties

1. Owner shall allow Contractor to use that portion of the property permitted by Texas Commission on Environmental Quality (“TCEQ”) Permit No. MSW-2045A (located at 9901 Custer Road, Plano, Texas, herein the “Custer Road Transfer Station”) described in Exhibit 1 (that portion of the Custer Road Transfer Station to be used by Contractor herein referred to as the “Custer Road Facility”) for the following purposes related to the operation of the Regional Composting Program:

- a. Receiving Acceptable Material (defined in Section III.A.8) from the Member Cities, citizens of the Member Cities, other commercial companies, and those municipalities approved in writing by Owner. Contractor shall be allowed to accept Acceptable Material at the Custer Road Facility.
 - i. Except as limited in Section III.A.10 or as may be changed by Owner by providing thirty (30) days’ written notice to Contractor, Contractor may not accept material or conduct any operations before 7:00 AM or after 7:00 PM Monday through Saturday.
 - ii. Except as limited in Section III.A.10 or as may be changed by Owner by providing thirty (30) days’ written notice to Contractor, Contractor may not accept material or conduct any operations on Sundays.
 - iii. Contractor may accept Acceptable Material from the Member Cities, citizens of the Member Cities, other commercial companies, and those municipalities approved in writing by Owner only from 7:00 AM to 4:30 PM, Monday through Saturday, unless Contractor or Owner requests additional hours no later than 3:30 PM the day of, and said request is approved by Owner in Owner’s sole discretion. These hours are limited in Section III.A.10 and may be changed by Owner by providing thirty (30) days’ written notice to Contractor.
- b. Sorting and grinding Acceptable Material;
- c. Storing Acceptable Material, and storing mulch, compost and other compost blends derived from Acceptable Material;
- d. Storing machinery, equipment and other materials necessary for the purposes described in this Amended Agreement; and
- e. Selling Kraft paper bags, mulch, compost and other compost blends derived from Acceptable Material.

2. Owner shall allow Contractor to use the FM 545 Compost Processing Site located at 5304 Farm-to-Market Road 545, Melissa, Texas (hereinafter the “FM 545 Facility”), until the earlier of (a) the termination of this Amended Agreement, or (b) ninety (90) days following Contractor’s receipt of a written notice to proceed from Owner notifying Contractor of completion of the Phase 2 Improvements (as described in Section III.D.3) at the 121 RDF Facility as described in Section III.A.4 (the “Notice to Proceed”). Owner shall allow Contractor to continue to access the FM 545 Facility for the purpose of cleaning the site as described in and for the time set forth in Section VII.4. The Contractor shall be allowed to operate at the FM 545 Facility for the purposes described below only from 7:00 AM to 5:00 PM, Monday through Saturday, except as limited in Section III.A.10 or as may be changed by Owner by providing thirty (30) days’ written notice to Contractor. Contractor shall be allowed to use the FM 545 Facility for the following purposes related to the operation of the Regional Composting Program:

- a. Receiving finished mulch, compost and other compost blends derived from Acceptable Material from the Custer Road Facility, sand, loam and “ground wood” mulch material;
- b. Coloring and grinding acceptable “ground wood” mulch material;
- c. Processing of acceptable “ground wood” mulch material, including, but not limited to, aging, coloring; grinding mulch, mixing of finished compost, sand, and loam materials; and, staging, mixing, screening and loading finished soil blends, including but not limited to, Pro-bedding and Powerful Potting Soil. No compost processing, neither aerobic nor anaerobic composting methods, shall be conducted at the FM 545 Facility;
- d. Storing mulch, compost and other compost-related products colored and/or processed on the FM 545 Facility; and
- e. Storing machinery, equipment and other materials necessary for the purposes described in this Amended Agreement.

3. Owner shall allow Contractor to use the area designated “Sector 11” in TCEQ Permit No. MSW-2294 for the NTMWD’s 121 RDF landfill (Sector 11 herein referred to as the “121 RDF Facility”) for the purposes described below. Within ninety (90) days of Contractor receiving the Notice to Proceed, all Contractor access to the 121 RDF Facility shall be from State Highway 121 (“SH 121”). The Contractor shall be allowed to accept Acceptable Material at the 121 RDF Facility and sell material at the 121 RDF Facility only from 7:00 AM to 5:00 PM, Monday through Friday and 8:00 AM to 3:00 PM Saturday except as limited in Section III.A.10 or as may be changed by Owner by providing thirty (30) days’ written notice to Contractor. Contractor shall be allowed to operate for all purposes described below other than accepting Acceptable Material and selling material from 7:00 AM to 7:00 PM Monday through Saturday except as limited in Section III.A.10 or as may be

changed by Owner by providing thirty (30) days' written notice to Contractor. Contractor shall be allowed to use the 121 RDF Facility for the following purposes:

- a. Receiving Acceptable Materials, as defined in Section III.A.8 below, and source-separated food waste, from Member Cities, citizens of Member Cities, commercial companies, and those municipalities approved by Owner in writing;
- b. Sorting and grinding Acceptable Materials;
- c. Processing Acceptable Materials, including, but not limited to, aging, staging windrows, windrow turning, watering, grinding, coloring, screening and mixing. An active, aerobic composting method (i.e. windrow or forced aeration) shall be utilized for processing compost following a short-term large windrow-based anaerobic composting method (i.e. static rows staged for no longer than two (2) months without turning and no longer than six (6) months in total) to proactively minimize odor and vectors;
- d. Storing Acceptable Materials, mulch, compost and other compost-related products;
- e. Storing machinery, equipment and other materials necessary for the purposes described in this Amended Agreement; and
- f. Selling compost-related products.

4. Owner shall construct the Phase 2 Improvements at the 121 RDF Facility as described in Section III.D.3. Within seven (7) days of completion of the Phase 2 Improvements, Owner shall provide the Notice to Proceed to Contractor, authorizing Contractor to relocate its operations from the FM 545 Facility to the 121 RDF Facility. Owner shall construct improvements at the Custer Road Facility (the "Custer Road Facility Improvements Project") as described in Section III.B.5.

5. Contractor shall update and revise its Operational Plans, to be reviewed and approved by Owner in continuance of the current operations at all three Regional Composting Facilities. Each Operational Plan will be facility specific, and shall include, at a minimum, the following sections:

- a. Equipment and Personnel- which shall include: a list of the equipment to be used and personnel involved in the operation, including on-site supervision; an organizational chart with e-mail and phone numbers of key personnel, who can be contacted and are able and authorized to respond to complaints or emergencies on a twenty-four (24) hour basis; a description of the operational process, the traffic flow through the site, and the operating hours. Contractor shall provide adequate, qualified personnel

and necessary equipment to conduct operations in an efficient and environmentally responsible manner;

- b. Contingency Plan- which shall outline the steps to be taken in the event of equipment breakdown (*e.g.*, grinding, composting, coloring, mixing, loading, and bagging) or weather related surges of Acceptable Materials;
- c. Fire Prevention and Protection Plan- which shall include a list of the equipment maintained on site to address potential fires, training of personnel in fire prevention, actions to be taken if a fire occurs, and emergency phone numbers;
- d. Safety Plan- which shall include training of personnel, site inspections conducted by a designated safety officer, vehicle operation and safety;
- e. Vector Control Plan- which shall include the operational methods instituted at the site to minimize and prevent the presence of vectors;
- f. Odor Control Plan- which shall include the methods instituted to minimize and control odor;
- g. Dust Control Plan- which shall include methods to be used by Contractor to prevent and minimize dust from the operation and on the roads within the facility;
- h. Emergency Spill Response Plan- which shall include the actions to be taken by Contractor in the event of a spill of liquid feed stock, and the actions to be taken in the event a rain event should cause overfilling of the detention ponds;
- i. Inclement Weather Plan- which shall include the actions to be taken by the Contractor in the operation and access to the site in the case of inclement weather and to prevent overfilling of the detention ponds; and
- j. Noise Control- which shall include the methods used to minimize noise from the operation and contingencies to reduce noise in the event noise complaints are received at the site.

Contractor shall provide two copies of the updated Operational Plans for review and approval by Owner no later than thirty (30) days following the Effective Date. Owner shall provide comments to the Contractor no later than ten (10) days following receipt of each Operational Plan. Contractor shall resubmit the Operational Plans with any requested additional information sufficiently addressing any comments provided by Owner. Once approved, Owner shall provide Contractor with a written Notice of Acceptance.

6. Owner shall demand no rent, payment or fee from Contractor for Contractor's use of the Custer Road Facility, the FM 545 Facility, or the 121 RDF Facility (collectively, the "Composting Facilities").

7. Contractor will manage and operate the Regional Composting Program at the Composting Facilities.

8. Contractor will accept yard trimmings, brush, clean wood material, tree trimmings, vegetative material, leaves, grass clippings (no sod), mixed yard waste, leaf mulch, shrubbery, sawdust, Christmas trees, wood chips, wood demolition debris, wood pallets, old corrugated containers, and tree trunks (not including root balls, and with respect to Bois d'arc tree trunks, no greater than twelve inches (12") in diameter), each no greater than eight feet (8') long (hereinafter defined as "Acceptable Materials") from the Member Cities and others as described in Sections III.A.1-3 above. All food waste and odiferous feedstocks will be received at the 121 RDF Facility exclusively. Any odiferous feed stocks shall be either covered with compost or acceptable "ground wood" mulch material within two hours of receipt or stored in closed containers equipped with biofiltration vents. Any closed containers required for this purpose shall be the responsibility of Contractor to furnish, install, operate and maintain. All composting operations shall be conducted at the 121 RDF Facility, on the Phase 1 or Phase 2 compost processing pads provided by Owner. At no time shall the composting operation be conducted at the FM 545 Facility or the Custer Road Facility, or, if at the 121 RDF Facility, off the Phase 1 and Phase 2 compost processing pad surfaces. Finished or curing products will only be allowed to be staged or stockpiled at the 121 RDF Facility, off of the Phase 1 and Phase 2 compost processing pads.

9. Contractor will provide on-site personnel at the Custer Road Facility and the 121 RDF Facility, during all hours of operation. Contractor shall have at least two (2) employees on staff with an active TCEQ Class A or B MSW Operator license. Contractor shall have at least one supervisor that has completed at least one of the TCEQ approved Specialized Composting Training programs within twelve (12) months of start date. Contractor shall have at least one supervisor present at one of the Composting Facilities during all hours any Composting Facility is in operation. Contractor shall have at least one (1) Compost Operations Superintendent (or manager) who shall have a minimum of three (3) years prior relevant experience in similar composting operations.

10. Member City residents will be allowed to deliver Acceptable Materials to the Custer Road Facility and the 121 RDF Facility during the hours specified in Sections III.A.1.a and III.A.3 respectively. Owner shall have no responsibility regarding the acceptability of materials received. Contractor will offer extended hours of operation when a special request is made by Owner to accommodate emergency response periods. Such extended hours shall not result in a change in the contract price for delivery of Acceptable Materials. Contractor and Owner will agree at least thirty (30) days in advance to cover necessary operations with staffing (Contractors and/or Owners) during additional holidays that are not recognized and shared by Owner, Contractor, and additional Member Cities. Contractor will close the Composting Facilities on the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day.

11. Contractor reserves the right to reject any load having excessive contaminants. Contamination occurs when a material, other than an Acceptable Material, ground wood mulch or food waste, is included in the load. If Contractor determines that a particular load has excessive contaminants, Contractor may stop the individual or driver from emptying the load. Contractor may notify the appropriate NTMWD Member City's contact or his designee of the contamination or Contractor may reject the load. If Contractor notifies the Member City, Contractor will allow the Member City one (1) hour to send an employee to the site and conduct an inspection of the rejected load. If the Member City removes the contaminants from the load, Contractor will accept the load for processing; otherwise Contractor may reject the load. Should Contractor reject the load, the load shall be redirected to an NTMWD solid waste facility; such load shall be charged as solid waste to the Member City that delivered the load. Alternatively, the Member City will have the option to redirect the rejected load to the nearest transfer station or landfill for disposal as solid waste in lieu of sending a supervisor to the site to inspect the load.

12. Contractor agrees not to accept delivery of hazardous materials (as defined by Federal, State or Local law) at the Composting Facilities. Should Contractor be notified by NTMWD, a Member City, or any regulating agency that any materials accepted by Contractor contain hazardous waste, Contractor shall be responsible for the proper disposal and all costs associated with that disposal of such hazardous materials in accordance with all applicable regulations. Contractor shall be responsible for any fines or litigation costs associated with any enforcement action, whether for acceptance of hazardous materials or for any non-compliance with applicable statutes or regulations.

13. Contractor will accept source-separated food waste ("Food Waste") only at the 121 RDF Facility. Food waste is defined as fruits, vegetables, meat, fish, bones, snack foods, breads, cooking grease, wax-coated paper drink containers, and soiled paper, cardboard or compostable serving items that are source-separated in accordance with 30 Texas Administrative Code ("TAC") Section 330.3(147). Rejected loads of Food Waste will be handled by the same process as established for rejecting loads of Acceptable Materials. Contractor shall provide a copy of the report regarding the rejected load to the commercial customer and, if the rejected load was from one of the Member Cities, to that Member City.

14. The Parties shall divide the costs for new improvements, maintenance and upkeep as follows. Maintenance and upkeep shall include, but not be limited to, maintaining all-weather roads, mowing grass in the Composting Facilities, keeping the facilities free of litter and all non-compostable waste, and repairing any and all improvements as described in this Section III.A.14.

a. Custer Road Facility:

i. Owner shall be responsible for extending the existing yard waste wood grind pad (said extension, but not the existing yard waste wood grind pad, hereafter referred to as the "Yard Waste Grind Pad Improvements"). Contractor shall have the right, but not the obligation, to observe installation of the Yard Waste Grind Pad Improvements. Within seven (7) days following completion of the installation of the

Yard Waste Grind Pad Improvements, Owner shall notify Contractor in writing. Within seven (7) days following Contractor's receipt of said notice, Contractor may provide written comments on the work. If Contractor does not provide written comments, the work shall be considered accepted by Contractor. If Contractor does provide written comments, Owner shall have thirty (30) days to use commercially reasonable efforts to address any comments received. At the end of said thirty (30) days, the repair shall be considered accepted unless Contractor objects in writing before the thirtieth (30th) day. If Contractor objects in writing, Owner shall hire a third party professional engineer of the Owner's choosing, licensed in Texas, to review the work and provide his opinion regarding the acceptability of the work for the purpose intended, and any additional work needed, if any. The engineer's opinion shall be binding on the Parties. Once any additional work is performed by Owner and accepted by the engineer, the installation of the Yard Waste Grind Pad Improvements shall be considered accepted by Contractor.

ii. For one (1) year following acceptance by Contractor of the installation of the Yard Waste Grind Pad Improvements, all maintenance and upkeep of the Yard Waste Grind Pad Improvements shall be the responsibility of Owner.

iii. One (1) year following acceptance by Contractor of the installation of the Yard Waste Grind Pad Improvements, all maintenance and upkeep of the Yard Waste Grind Pad Improvements shall be the responsibility of Contractor.

iv. Except as described in Section III.A.14.a.ii, all maintenance and upkeep of the Custer Road Facility shall be the sole responsibility of Contractor.

b. FM 545 Facility

i. All maintenance and upkeep of the FM 545 Facility shall be the sole responsibility of Contractor.

c. 121 RDF Facility

i. Owner shall install the Phase 2 Improvements. Contractor shall have the right, but not the obligation, to observe any and all construction of the Phase 2 Improvements. Within seven (7) days following completion of the Phase 2 Improvements, Owner shall provide the Notice to Proceed to Contractor. Within seven (7) days following Contractor's receipt of said notice, Contractor may provide written comments on the Phase 2 Improvements. If Contractor does not provide written comments, the Phase 2 Improvements shall be considered accepted by Contractor. If Contractor does provide written comments, Owner shall have thirty (30) days to use commercially reasonable efforts to address any comments received. At the end of said thirty (30) days, the Phase 2 Improvements shall be considered accepted unless Contractor objects in writing before the thirtieth (30th) day. If Contractor objects in writing, Owner shall hire a third party professional engineer of the Owner's choosing, licensed in Texas, to review the Phase 2 Improvements and provide his opinion regarding the compliance of the Phase 2 Improvements with the requirements in Section III.A.4, and any additional work needed, if any. The

engineer's opinion shall be binding on the Parties. Once any additional work is performed by Owner and accepted by the engineer, the Phase 2 Improvements shall be considered accepted by Contractor.

ii. For one year following acceptance by Contractor of the installation of the Phase 2 Improvements, all maintenance and upkeep of the Phase 2 Improvements shall be the responsibility of Owner.

iii. One year following acceptance by Contractor of the installation of the Phase 2 Improvements, all maintenance and upkeep of the Phase 2 Improvements shall be the responsibility of Contractor.

iv. Unless agreed to sooner by Owner, after the Phase 2 Improvements are processing at eighty-five (85%) percent of annual capacity of 42,000 composted tons (the "Repair Trigger") and then for the term of this Amended Agreement, Owner shall be responsible for all reasonable and necessary repairs to the existing all-weather compost processing pad. For determining the Repair Trigger, Contractor will track the annual composted tons of materials processed on a monthly basis to show volumes of in-bound feedstock being converted to finished compost products by weight. Contractor will base monthly tons of compost generated by multiplying the total yards of compost sold and month-end inventory by the average pounds per cubic yard of compost generated through weekly measured samples.

v. Except as described in Section III.A.14.c.ii, all maintenance and upkeep of the 121 RDF Facility shall be the sole responsibility of Contractor.

15. Contractor shall operate the Composting Facilities in such a manner as not to be a public nuisance, and in accordance with all required and approved plans and permits. If Owner or Contractor receives an odor complaint related to Contractor's operation of the Composting Facilities, Contractor shall investigate and respond to such odor complaint within two (2) hours of receipt. If Contractor is unable to conduct the investigation within two (2) hours, Contractor shall notify Owner. All other complaints shall be responded to within twenty-four (24) hours of receipt. Within seven (7) days following receipt of a complaint, Contractor shall also provide the Owner a written report on each complaint received, including a summary of Contractor's investigation of the incident upon which the complaint was based. The report shall also include information identifying actions taken by Contractor to resolve the incident, including, when requested by Owner, a plan for preventing a recurrence of the incident in the future. It is the intention of Owner that these matters be resolved; however, if the incident cannot be resolved to the satisfaction of the complainant within five (5) days, Contractor will provide Owner with a plan and schedule for resolving the complaint and/or preventing future occurrences of the incident. The plan and schedule are subject to approval by the Owner. If Contractor determines that no action is necessary and this is not satisfactory to the complainant, Contractor must provide documentation to Owner within five (5) days of notice to the complainant so that Owner can make a determination as to what, if any, type of action by Contractor is necessary.

16. Contractor shall obtain a copy of, be familiar with, and comply with, all requirements of all permits for the Composting Facilities. Contractor shall comply with all federal, state and local laws pertaining to the operation of the Regional Composting Program at the Composting Facilities, including but not limited to the State Composting Regulations found in Chapter 332 of Title 30 of the Texas Administrative Code. Contractor will have access to these regulations through direct website connection at the Custer Road Facility and the 121 RDF Facility. Should Owner notify Contractor, in writing, of any Contractor operation that is not in conformance with any of the requirements noted above, Contractor shall be given 10 days to correct such operation. Should a state or federal agency notify Contractor, either verbally or in writing, of any violation of a state or federal requirement, Contractor shall notify Owner, verbally, within one (1) hour of receiving said notice, and in writing within one (1) day of receiving said notice. Contractor shall immediately take any and all steps to remedy the alleged non-compliance required by Owner, within the time designated by Owner. In the event that Contractor does not take the steps required by Owner, Owner shall have the right, but not the obligation, to take the same steps, and to charge Contractor the reasonable costs for taking the same steps, to be paid by Contractor within sixty (60) days of receiving an invoice detailing the work performed by Owner. Compliance with all permits (including TCEQ-issued permits for the 121 RDF landfill and the Custer Road Transfer Station) and all applicable local, state and federal regulations shall be absolute. The composting operation is within the permit boundary of the Owner's 121 RDF Landfill, and the Custer Road Facility is within the permit boundary of the Owner's Custer Road Transfer Station. As such, both facilities are subject to inspections by the TCEQ. Should any inspection by the TCEQ result in any alleged violation of any governing rule, regulation or ordinance, Contractor shall follow TCEQ requirements to remedy the alleged violation. Contractor shall be responsible for any fines, remediation or litigation costs related to the operation of the Regional Composting Facilities.

17. Contractor shall be responsible for marketing the compost, mulch, and other compost related products generated by the Regional Composting Program ("Products"). Contractor will market the Products under the "Texas Pure Products" label (or other labels at Contractor's sole discretion). Contractor shall offer these Products to NTMWD and the Member Cities at the same discounted rates charged to Plano City Departments. Contractor shall offer the Products to residents of the Member Cities at the same discounted rates charged to Plano City residents. Contractor will market the regional composting facilities to persons seeking alternative disposal options for Acceptable Materials and Food Waste. Contractor's failure to market the Products shall not be grounds for change in the contract cost of delivered Acceptable Materials for the Member Cities.

18. Contractor agrees to provide, at no cost, three (3) cubic yards of bulk finished compost for every one hundred (100) tons of Acceptable Materials delivered by the Member Cities, to be used to promote the use of compost within the community. Alternatively, at the request of a Member City, the Contractor shall provide, at no cost, ten (10) one cubic foot capacity bags of finished compost for every one hundred (100) tons of Acceptable Materials delivered by the participating Member City. The bulk or bagged compost will be delivered within sixty (60) days from receiving written notice from participating Member Cities. The

Member Cities shall be a third party beneficiary of this Amended Agreement with respect to this Section III.A.18.

19. Owner and Contractor agree that Contractor may accept loads of Acceptable Materials at the Custer Road Facility or Acceptable Materials and Food Waste at the 121 RDF Facility, from sources other than the Member Cities, provided that (a) the loads are not contaminated; (b) Contractor charges the commercial hauler a tipping fee that is no less than the amount being charged at that time to the Member Cities for yard waste disposal, unless source-separated feedstock is needed for product development; and (c) acceptance of the additional material does not impair the ability of Contractor to perform its obligations under this Amended Agreement. Contractor shall not accept loads of Acceptable Materials from municipal entities other than Member Cities unless written approval is given to the Contractor in accordance with Sections III.A.1.a and III.A.3.a. Owner shall have the right but not the obligation to verbally notify Contractor when the Custer Road Facility has received ninety percent (90%) of its maximum daily waste acceptance rate (currently 1900 tons per day; the Parties acknowledge that the TCEQ Permit for the Custer Road Transfer Station states that up to 300 tons of yard waste is not included in the maximum daily waste acceptance rate; the Parties further acknowledge that TCEQ's interpretation of this provision will be binding on the Parties). After Contractor has been notified by Owner, if requested by Owner in Owner's sole discretion, Contractor shall not accept any more material that day except material from the Member Cities. Further, if Owner notifies Contractor that it has received one hundred percent (100%) of its maximum daily waste acceptance rate, Contractor shall not accept any more material that day. Contractor shall provide training for all operating personnel in proper procedures for composting in accordance with the terms of this Amended Agreement.

B. Custer Road Facility

1. Contractor will utilize the Custer Road Facility to receive Acceptable Materials, separate, sort, remove contaminants, grind materials, and load ground materials into Contractor's transfer trailers. Contractor will be allowed to market, sell, and distribute mulch, compost, and other related products to private and public customers, contingent upon an approved traffic flow plan by NTMWD. All grinding operations shall be conducted on the concrete grind pad provided by the Owner. At no time shall the grinding operation be conducted off the concrete grind pad. All finished products will be staged or stockpiled on the concrete grind pad.

2. Contractor shall acquire additional equipment at Contractor's cost for the Custer Road Facility as needed to process Acceptable Materials received. Contractor will not allow storage of ground and unground Acceptable Materials to exceed twenty thousand (20,000) cubic yards (combined), excluding all finished and saleable product volumes. Ground Acceptable Materials shall be continuously rotated and removed from the site. The ground Acceptable Materials allowed to be stored on the site shall be the most recent material received and ground on the site. Should the storage of this material result in the production of odors at the site and such odors prove to be a nuisance, Owner shall request Contractor remove and reduce the current amount of stored material.

3. Contractor shall maintain a back-up grinder and sufficient equipment, including front-end loaders, and transfer tractors and trailers to prevent excessive stockpiling of ground and ungrounded Acceptable Materials. Storage of materials will be tracked and maintained in a manner to insure the materials do not develop internal temperatures in excess of 140 degrees or otherwise create potential fire hazards. Should the storage of this material result in the production of odors at the site and such odors prove to be a nuisance, Owner shall request Contractor remove and reduce the current amount of stored material at the site.

4. All loads of Acceptable Material brought from the Member Cities (whether city or contracted commercial hauler) will be weighed on the Custer Road Transfer Station weigh scale prior to processing by Contractor. Contractor shall keep records of all loads received. Owner shall utilize duplicate weight tickets for tracking Acceptable Materials delivered. Distribution of the tickets shall be as follows:

Original – Owner

Copy – Member City (or contract) Driver

Member Cities' residents will be allowed to drop-off a maximum of two (2) loads of Acceptable Materials per month when delivered in their personal vehicle and presenting an original or electronic copy of their most recent City issued Utility Bill and Driver's License with matching address. Contractor shall maintain a log for the Owner of all records regarding receipt of loads from the Member City residents which includes: date, last name, address, and city of residence. In addition, Contractor shall provide an invoice with necessary back-up information by the tenth (10th) day of each month, and include: Member City, number of loads, and total weight in tons. Amount invoiced shall be based on an assumed weight of 0.23 tons per residential load. Once during the Term of this Agreement, Contractor may request that Owner conduct a study to determine the average weight of residential loads, and shall revise the amount invoiced in accordance with the results of the study.

Contractor shall maintain a log of all unweighed Acceptable Materials delivered by non-Member City customers (including residents of non-Member Cities, commercial non-Member City customers, and non-Member Cities). The log shall include the name and address of the person or business delivering the material, the date of delivery and the established weight and cubic yards per delivery. The weight and cubic yards of each delivery will be based upon the delivery vehicle used: passenger vehicle and pick-ups – one (1) cubic yard = 450 pounds, pick-ups towing a single axle trailer – seven (7) cubic yards = 3,220 pounds, and pick-ups towing a double axle trailer – fourteen (14) cubic yards = 6,440 pounds. No reductions will be made for partial loads.

5. Owner shall hire the architects, engineers and other professionals necessary to design the Custer Road Facility Improvements Project consisting of: concrete entrance driveway into the compost grinding area, extending the all-weather concrete-based area for grinding operations with added push walls along the southern area and eastern edge, and relocating current diesel fuel tank from the current location to a mutually acceptable location.

The final plans for the Custer Road Facility Improvements Project will be reviewed and approved by Owner and Steering Committee.

6. Following approval of the final plans, Owner shall put the Custer Road Facility Improvements Project out for bid in accordance with Texas Competitive Bid Laws. Owner shall receive bids for the Custer Road Facility Improvements Project and be responsible for the administration of the Improvements Project.

7. Owner shall pay for all costs associated with construction of the Custer Road Facility Improvements Project, including, but not limited to: design fees, engineering fees, testing fees, and construction costs, including labor, materials and construction equipment costs.

C. FM 545 Facility

1. Contractor will utilize the FM 545 Facility to mix finished compost, sand, loam and accept “ground wood mulch” material, from the Custer Road Facility for such purposes. The Contractor will also use the FM 545 Facility to process acceptable “ground wood mulch” material, including, but not limited to, aging, coloring, and grinding mulch, and mixing finished compost, sand, and loam materials, including, but not limited to, staging, mixing, screening and loading finished soil blends such as: Pro-bedding and Powerful Potting Soil products.

2. Prior to the Contractor closing the FM 545 Facility and moving all operations to the 121 RDF Facility, Owner agrees to complete the Phase 2 Improvements at the 121 RDF Facility.

3. Owner shall provide the Notice to Proceed to Contractor. Contractor will relocate all operations from the FM 545 Facility to the 121 RDF Facility within ninety (90) days of the written Notice to Proceed issued by Owner. Once all material is removed from the FM 545 Facility, Contractor will have an additional one hundred eighty (180) days to remove all improvements from the FM 545 Facility. Owner will provide a detailed “Site Expectation list”, clearly identifying grading plan, clean-up tasks or items, and expected final site conditions along with the Notice to Proceed. Contractor shall provide comments to the Owner within ten (10) days of receipt of the “Site Expectation list”, and Owner shall revise and return to Contractor within ten (10) days the “Site Expectation list” sufficiently addressing comments provided by Contractor or with any additional information sufficiently addressing why specific comments were not revised. Contractor will be responsible for all “Site Expectation list” clean-up costs associated with the FM 545 Facility incurred as a result of operating on this site, excluding those costs associated with off-site removal of excess soil generated by the site grading plan. A final inspection of the site shall be conducted by NTMWD following cleanup by the Contractor. Any deficiencies will be noted in writing and the Contractor shall correct those deficiencies within sixty (60) days of receipt of such notice. Following Owner’s final inspection of the FM 545 Facility and approval of the cleanup, Owner shall release and indemnify Contractor from any liability related to the condition of

the FM 545 Facility. The Contractor's obligations under this Section III.C.3 shall survive termination of this Agreement.

D. 121 RDF Facility

1. Contractor may utilize the 121 RDF Facility to receive Acceptable Materials, Food Waste, and materials noted in TCEQ Compost Rules 30 TAC Section 332.21 (Operations Requiring Notification) such as organic by-products, animal mortalities, and manure. Contractor may also: remove contaminants; grind Acceptable Material; compost Acceptable Materials and Food Waste (including windrow composting, static pile composting, and forced aeration composting); turn compost; water compost; screen compost; mix soil blends; color mulch; store compost, mulch and other material; and bag, market, sell and distribute compost, mulch and other compost related products. Composting at the 121 RDF Facility will be processed through an active, aerobic composting method (i.e., windrows or forced aeration piles for up to six (6) months in total) following the initial short-term large windrow-based anaerobic composting method (i.e., static rows staged for no longer than two (2) months without turning and no longer than six (6) months in total). As the composting process varies based on type of material, percentage of material (carbon to nitrogen), moisture levels and technology, Owner agrees to allow Contractor to continually evaluate and pilot improved composting processes and methods in compliance with TCEQ Compost Rules 30 TAC Section 332 and the 121 RDF MSW Permit No. 2294, to insure the operational effectiveness and financial efficiencies are improved wherever proven. Owner and Contractor agree that, if the compost process substantially changes, Contractor will provide the Owner an updated Operational Plan for review and approval within thirty (30) days of confirming a substantial change.

2. The Owner will allow Contractor to use the 121 RDF Facility truck scales to weigh all deliveries of Acceptable Materials and Food Waste delivered. The Owner will provide a monthly report to Contractor and shall include the Customer name, vehicle number, scale ticket number, weight, date, and time of each individual delivery. Contractor will invoice all commercial non-Member City customers based on the tonnage weight. All these deliveries will be included in the Contractor's monthly summary report invoice file that includes the following information shall be provided to the Owner by the tenth (10th) day of each month: Member City, number of loads, total tons.

3. Owner shall hire the architects, engineers and other professionals necessary to design the following improvements at the 121 RDF Facility (the "Phase 2 Improvements"): concrete compost processing pad, retention pond, fire suppression loop around the exterior area of the pad, and grading of adjoining land to direct all stormwater runoff away from the composting site and retention ponds. Owner will submit the design of the Phase 2 Improvements to Contractor for approval, such approval to not be unreasonably withheld or delayed.

4. Owner shall put the 121 RDF Facility Improvements out for bid in accordance with Texas Competitive Bid Laws. Owner shall receive bids for the project and be responsible for the administration of the Phase 2 Improvements in conjunction with

Contractor's involvement in scheduled project team meetings throughout the completion of the project.

5. Owner shall pay for all costs associated with the Phase 2 Improvements including, but not limited to: design fees, engineering fees, testing fees, and construction costs including labor, materials and construction equipment costs.

IV. POSSESSION AND WARRANTIES Environmental Warranty and Responsibilities

1. Owner represents and warrants it has not placed, nor allowed to be placed, any hazardous substance, pollutant or contaminant, as defined by CERCLA, 42 U.S.C. 9601, on the Composting Facilities. Further, it has no knowledge of any activity that has been conducted on the 121 RDF Facility that would result, cause, or constitute an environmental hazard, nor is Owner aware, or should be aware, of any hazardous substance on said 121 RDF Facility or the abatement thereof.

2. **Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Contractor agrees to indemnify and hold Owner harmless against all costs of environmental clean-up of Composting Facilities resulting from Contractor's composting operation at the Composting Facilities. This Section IV.2 shall survive termination of this Amended Agreement.**

3. Contractor agrees to be responsible for all actual cleanup costs incurred as a result of its composting operations, including, but not limited to, those associated with contaminated soil. Notwithstanding the foregoing indemnification provided in Section IV, Sub-section 2, the Parties agree Contractor shall not be responsible for contamination or any other damage which occurred prior to Contractor's operation on the Composting Facilities or which occurs after Contractor ceases operations and completes cleanup on the Composting Facilities. This Section IV.3 shall survive termination of this Amended Agreement.

4. Contractor acknowledges that it has inspected the area proposed for the Regional Composting Program within the Composting Facilities and finds no contamination. Contractor agrees to accept the Composting Facilities in their present condition.

V. IRRIGATION

Owner shall make sufficient quantities of water available to Contractor to meet the needs of the 121 RDF Facility and the Custer Road Facility. Contractor agrees to pay an annual pro-rated percentage of the potable water used in composting site operations billed by the City of Melissa and the City of Plano to Owner, and a pro-rated percentage of electricity

used at the Custer Road *Facility* in composting site operations billed by CoServ Electric Cooperative.

VI. PAYMENT/FUNDING

1. Owner agrees to pay Contractor a fee of twenty-three dollars and twenty seven cents (\$23.27) per ton for each ton of Acceptable Materials delivered by Allen, Frisco, McKinney, and Richardson (City, contractor or residents) to the Custer Road Facility, and sixteen dollars and fourteen cents (\$16.14) per ton for each ton of Acceptable Materials delivered to the 121 RDF Facility. All Food Waste must be delivered to the 121 RDF Facility exclusively. 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. Owner shall make payment to Contractor within thirty (30) days of Owner's receipt of an acceptable invoice from Contractor. All fees and costs paid to Contractor in accordance with this section shall be paid from fees collected from Allen, Frisco, McKinney, and Richardson for delivery of Acceptable Materials.

2. 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.

3. 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.

4. Owner shall distribute the TCEQ Compost Refund to the Member Cities based upon each Member Cities' quarterly percentage of Acceptable Material tonnage

delivered to regional composting program. This Section VI.4 shall survive termination of this Amended Agreement.

5. Contractor agrees to provide the "Profit/Revenue" share component described in this Section VI.5, 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.5. This Section VI.5 shall survive termination of this Amended Agreement.

6. The processing rates set out in Section VI.1 shall be adjusted annually by the net percentage increase or decrease 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). In no event, shall the processing rate be increased more than three and a half percent (3.5%) in any given year or more than the CPI-U for the given year.

7. At no time shall the tipping fee for the Regional Composting Program exceed eighty-five percent (85%) of the solid waste per ton cost charged by NTMWD to Member Cities as calculated from the annual cost per ton.

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.

VII. TERMINATION

1. In the event of any default by Contractor in any of the covenants or obligations contained in this Amended Agreement, NTMWD shall notify Contractor in

writing and specify the precise nature of the default. Contractor shall thereafter have thirty (30) days from date the notice is received in which to cure such default (or, if same cannot be reasonably cured within such period, to take significant steps to commence such cure and thereafter diligently complete such cure), failing in which NTMWD shall be entitled to terminate this Amended Agreement.

2. This Amended Agreement may be terminated, in accordance with Section VI.8.

3. This Amended Agreement may be terminated, without fault, at any time by either party giving one hundred and eighty (180) days' advance notice to the other party.

4. In the event of termination for any reason, including the end of the term of this Amended Agreement, as said term may be extended from time to time, Contractor shall, within one hundred and eighty (180) days following such termination, remove all material (including but not limited to Acceptable Material, contaminated or otherwise unsuitable raw material, paint and dye, and finished product) and equipment from the Composting Facilities, clean the Composting Facilities, and remove and properly dispose of any contaminated soil from the Composting Facilities. This Section VII.4 shall survive termination of this Amended Agreement.

VIII. NOTICE

Notice as required by this Agreement shall be in writing delivered to the Parties via e-mail or certified mail at the addresses listed below:

PLANO

Gerald Cosgrove
Director of Public Works
City of Plano
P.O. Box 860358
Plano, TX 75086-0358
972-964-4276 (Telephone)
GeraldC@plano.gov

NTMWD

Thomas W. Kula
Executive Director
North Texas Municipal Water District
P.O. Box 2408
Wylie, TX 75098
972-442-5405 (Telephone)
tkula@ntmwd.com

Each Party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

IX. HOLD HARMLESS

Each Party to this Amended Agreement does hereby agree to waive all claims against, release and hold the other party and its respective officials, officers, agents, and employees, both in their official and individual capacity, harmless from and against any and all liability,

claims, suits, demands, losses, damages (including court costs and attorney's fees) or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this Agreement.

X. INSURANCE

Satisfactory certificates of insurance or letters of self-insurance for all coverage listed herein shall be filed with the Owner within 30 days of executing this Agreement. Contractor is a self-insured entity as allowed by law. The Contractor can only assume those liabilities that it is legally liable for.

1. Worker's Compensation and Employer's Liability:

Contractor will provide Worker's Compensation benefits for its employees in accordance with the Texas Worker's Compensation Act. The Contractor is self-funded for Worker's Compensation as allowed by the Act.

2. Comprehensive Automobile Liability:

This insurance shall be written in comprehensive form and shall protect Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles by Contractor's employees during the course and scope of their employment and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

3. Comprehensive General Liability:

This insurance shall be written in comprehensive form and shall protect Contractor against all claims arising from injuries to persons other than his employees or damage to property of Owner or others arising out of any act or omission of Contractor or his agents, employees, or subcontractors.

4. Notice of Cancellation.

Notification of cancellation or change in insurance carriers or agencies shall be given to the Owner thirty (30) days prior to such cancellation or change and satisfactory current certificates of insurance shall be furnished at the time of such change.

XI. ENTIRE AGREEMENT

This Amended Agreement replaces the Base Agreement and all prior amendments to the Base Agreement, represents the entire agreement between Owner and Contractor, and supersedes all prior negotiations, representations and/or agreements, either written or oral.

This Amended Agreement may be amended only by written instrument signed by both Parties.

XII. VENUE

This Amended Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, and this Amended Agreement is performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

XIII. SEVERABILITY

The provisions of this Amended Agreement are severable. In the event that any section, sub-section, paragraph, sentence, clause, or phrase of this Amended Agreement shall be found to be contrary to law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this Amended Agreement; however, upon the occurrence of such event, either Party may terminate this Amended Agreement by giving the other Party thirty (30) days written notice of its intent to terminate.

XIV. ASSIGNMENT AND SUBLETTING

This Amended Agreement shall not be assigned in whole or in part without the written consent of both Parties. Any responsibilities that the Contractor sub-contracts to a separate entity, that entity will be required to provide certification of insurance listing the Owner as “additional insured” and will demonstrate the following minimum levels of coverage: General Liability - \$1,000,000 Limit per Occurrence & \$2,000,000 Aggregate, Automobile Liability - \$500,000 Limit per Accident or Combined Single Limit, Bodily Injury Liability - \$1,000,000 per Person or Accident, Property Damage Liability - \$1,000,000 per Accident or Combined Single Limit, and Workers’ Compensation equal to state statute.

XV. INTERPRETATION OF AGREEMENT

This is a negotiated document. Should any part of this Amended Agreement be in dispute, the Parties agree that this Amended Agreement shall not be construed more favorably for either Party based on the presumption that it was drafted by either Party.

XVI. REMEDIES

No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy

given hereunder. No covenant or condition of this Amended Agreement may be waived without the express written consent of the Parties. It is further agreed that one (1) or more instances of forbearance by either Party in the exercise of its respective rights under this Amended Agreement shall in no way constitute a waiver thereof.

**XVII.
AUTHORITY TO SIGN**

The undersigned officers and/or agents of the Parties hereto are the duly authorized officials and have the necessary authority to execute this Amended Agreement on behalf of the Party it represents.

**XVIII.
CALENDAR DAYS**

Throughout this Amended Agreement, “Day” shall mean a calendar day, unless otherwise specified. If a deadline falls on a weekend or holiday, the deadline shall be the following working day.

[Remainder of Page Intentionally Blank]

EXECUTED in duplicate originals this ____ day of _____, 2016.

CITY OF PLANO, TEXAS

By: _____
Bruce D. Glasscock
CITY MANAGER

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

**NORTH TEXAS MUNICIPAL WATER
DISTRICT**

By: _____
Thomas W. Kula
Executive Director

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of such corporation.

Notary Public, State of Texas

My Commission Expires: _____

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2016, by **THOMAS W. KULA**, Executive Director of the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, on behalf of the District.

Notary Public, State of Texas

My Commission Expires: _____