

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON TERMINATING THE LEASE AGREEMENT AS AMENDED, TO THE EXTENT THE SAME WAS PROPERLY ASSIGNED, BETWEEN THE CITY AND OPALA, LLC, A TEXAS LIMITED LIABILITY COMPANY; TERMINATING OPALA, LLC'S TENANCY, IF ANY, IN 1301 S. MAYHILL RD. AND 1001 S. MAYHILL RD., BUILDINGS 101 AND 102, DENTON, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 4, 2013, under the authority of Ordinance No. 2013-143, a copy of which is attached as Exhibit "A", the City of Denton entered into a Lease Agreement with Master Recycling of Texas, Inc., a Texas corporation, for the use of a certain 3.5 acre tract of land located on the City's solid waste landfill site and which is commonly known as 1301 S. Mayhill Rd., Denton, Texas;

WHEREAS, on October 15, 2013, under the authority of Ordinance No. 2013-274, a copy of which is attached as Exhibit "B", the City of Denton entered into a First Amendment to the Lease Agreement with Master Recycling, Inc., for the use of a certain 1.924 acre tract located on the City's Municipal Solid Waste facility and which is commonly known as 1001 S. Mayhill Rd., Buildings 101 and 102, Denton, Texas (1301 S. Mayhill Rd. and 1001 S. Mayhill Rd., Buildings 101 and 102, Denton, Texas are hereinafter referred to as the "Leasehold Estate").

WHEREAS, on September 5, 2014, Master Recycling, Inc., without approval of the City's Council as required by the Lease Agreement as Amended, purportedly assigned the Lease Agreement as Amended to Pa'ele, LLC, a Texas limited liability company, now known as Opala, LLC;

WHEREAS, the stated use of the Leasehold Premises under the Lease Agreement as Amended was for the handling, processing, storage of biofuels and recyclable materials, the production of biofuels and associated by-products and the end products therefrom, and other operations associated with the containerized liquid products which may include but not be limited to the packaging and repackaging of liquid drink products to return them to a marketable condition or for use in the production of ethanol;

WHEREAS, Opala, LLC's actual use of the Leasehold Premises is materials recycling of containerized liquid products while disposing of the post-destruction liquids with the City, at no cost;

WHEREAS, the City, to dispose of the post-destruction liquids to the working face of the enhanced leachate recirculation landfill ("ELR Landfill"), must combine the post destruction liquids with wood products to produce compost ("ELR Landfill Compost Operations") and, in accordance with the provisions of the Municipal Solid Waste Permit 1590A issued by the Texas Commission on Environmental Quality, can only dispose of waste grade compost onto the ELR Landfill;

WHEREAS, the cost to the City to accept, transport, and process these post-destruction liquids from Opala, LLC, so that they can be disposed of in the ELR Landfill is estimated to a minimum of \$208,000 annually;

WHEREAS, it is uncertain and speculative that the introduction of the post-destruction liquids received from Opala, LLC, provides any benefit to landfill operations for the City's ELR Landfill above that of using water; and

WHEREAS, the City Council of the City of Denton believes that it is in the best interest of the City to terminate the ELR Landfill Compost Operations and the supporting agreements, activities and spending related to the same, including the Lease Agreement as Amended;

WHEREAS, the City Council of the City of Denton believes that the Lease Agreement as Amended was not properly assigned to Opala, LLC, from Master Recycling, Inc., Opala, LLC's tenancy, if any, related to the Leasehold Estate should be terminated and the City take possession of the Leasehold Estate;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DENTON:

SECTION 1. That the facts and recitations contained in the preamble of this ordinance are found and declared to be true and correct and are incorporated herein for all purposes.

SECTION 2. That the City Council, to the extent it was properly assigned, terminates the Lease Agreement approved by City Council under Ordinance No. 2013-143 and amended under Ordinance No. 2013-274 ("Lease Agreement as Amended").

SECTION 3. That the City Manager, or his designee, and the City Attorney, or his designee, are authorized to take any and all actions necessary to effect the termination the Lease Agreement as Amended.

SECTION 4. That the City Council terminates Opala, LLC's tenancy, if any, in and to 1301 S. Mayhill Rd. and 1001 S. Mayhill Rd., Buildings 101 and 102, Denton, Texas ("Leasehold Estate").

SECTION 5. That the City Manager, or his designee, and the City Attorney, or his designee, are authorized to take any and all actions necessary to effect the termination of Opala, LLC's tenancy, if any, in the Leasehold Estate and remove Opala, LLC from the Leasehold Estate and for the City of Denton to take possession of the same.

SECTION 6. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same remain in full force and effect.

SECTION 7. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 8. That this ordinance shall take effect immediately from and after its passages.

DULY PASSED AND APPROVED by the City Council of the City of Denton on the 5<sup>th</sup> day of December, 2017.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY: \_\_\_\_\_



# **EXHIBIT "A" TO ORDINANCE**

ORDINANCE NO. 2013-143

AN ORDINANCE APPROVING A LEASE AGREEMENT TO BE EXECUTED BY THE CITY MANAGER, BY AND BETWEEN THE CITY OF DENTON, TEXAS AND MASTER RECYCLING OF TEXAS, INC., A CORPORATION, FOR A CERTAIN 3.5 ACRE TRACT OF LAND SITUATED IN THE GIDEON WALKER SURVEY, ABSTRACT NUMBER 1330, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS, COMMONLY KNOWN AS 1301 SOUTH MAYHILL ROAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City previously entered into a Lease Agreement (the "Agreement") for a ground lease of a certain 3.5 acre tract of land, located adjacent to the City's landfill real property, with Tetra Point Fuels, Inc., a Delaware Limited Liability Company (hereafter "Tetra Point") for a term of ten-years, on April 21, 2009, the execution of which Lease Agreement was approved by the City Council by Ordinance No. 2009-099 on April 21, 2009; and

WHEREAS, on January 25, 2013, Tetra Point defaulted in its financial obligations to the City with respect to said Agreement and also failed to develop its operations on the said realty; thereafter, Staff immediately commenced efforts to locate a suitable tenant to replace Tetra Point, to occupy the leased premises; negotiations began shortly thereafter and Master Recycling of Texas, Inc., a Corporation (hereafter "Master Recycling"), thereafter agreed with the City to bring the financial obligations arising under the Tetra Point Agreement current, and further expressed its intention to also enter into a new lease for a term of ten-years, with options contained therein, regarding the leased premises in accordance with its own plans for development, having purchased the assets of Tetra Point in March 2013; and

WHEREAS, the City and Master Recycling have completed their negotiations which have culminated in the proposed Lease Agreement which is attached hereto as Exhibit "A," and

WHEREAS, on March 25, 2013 this item was presented to the Public Utilities Board, and the Board recommended approval of the same; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitations and statements contained in the Preamble hereto are incorporated herewith by reference for all purposes, and made a part of this ordinance.

SECTION 2. The City Manager or his designee is hereby authorized to execute the "Lease Agreement" by and between the City of Denton, Texas and Master Recycling of Texas, Inc., a Corporation, which is attached hereto as Exhibit "A" and is incorporated herewith by reference, in substantially the form of the "Lease Agreement" which is attached hereto and made a part of this ordinance for all purposes.

SECTION 3. The City Manager is authorized to make any expenditures and to perform such duties as are set forth in the Lease Agreement.

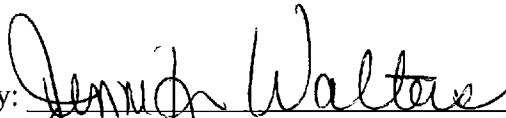
SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 4th day of June, 2013.

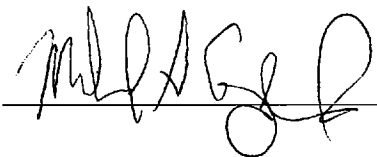


MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: 

**STATE OF TEXAS**

**COUNTY OF DENTON**

**LEASE AGREEMENT**

This Lease Agreement (hereafter the "Lease Agreement") is made and entered into effective as of the Effective Date, as set forth below, by and between THE CITY OF DENTON, TEXAS (hereinafter sometimes referred to as "LESSOR" and/or "the City"), and MASTER RECYCLING OF TEXAS, INC. ("LESSEE").

WHEREAS, LESSOR owns the City's Solid Waste Services Site (the "Site"), located in the vicinity of 1100 Mayhill Road, Denton, Texas and operates a landfill on the Site (the "Landfill"); and

WHEREAS, the City desires to lease to LESSEE an approximate 3.5 acre tract of land located at the Site, which property is more specifically set forth and described, by metes and bounds on Exhibit "A" (hereinafter the "Leased Premises"); and

WHEREAS, LESSEE desires to lease the Leased Premises from the City for purposes of construction and operation of a processing and ethanol production plant to receive containers and bulk liquids containing sugar conversion of those materials into an ethanol fuel (hereafter the "Ethanol Production and Processing Agreement" as well as other operations associated with containerized liquid drink products which may include but not be limited to the packaging and repackaging of liquid drink products to return them to a marketable condition or for use in the production of ethanol.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and for \$10.00 other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE, intending to be legally bound, do hereby AGREE as follows:

**ARTICLE 1  
PREMISES**

**1.1 Lease Premises.**

LESSOR hereby leases and lets unto LESSEE, and LESSEE hereby leases and lets from LESSOR the Leased Premises, which is that certain tract or parcel of real property containing approximately three point five (3.5) acres, more or less, located at the Site, commonly referred to as 1301 South Mayhill Road, Denton, Denton County, Texas, as is more particularly described by metes and bounds on Exhibit "A;" and also as depicted by the field notes as Exhibit "B," both of which exhibits which are attached hereto and incorporated by reference herein.

**1.2 Use of Premises.**

The Leased Premises are to be occupied and used by LESSEE solely for the handling, processing, storage of biofuels and recyclable materials, the production of biofuels and associated by-products, and the end products therefrom. As well as other operations associated

with containerized liquid drink products which may include but not be limited to the packaging and repackaging of liquid drink products to return them to a marketable condition or for use in the production of ethanol. In the event LESSEE for any reason desires hereafter to substantially modify and/or substantially change its use of any of the Leased Premises, the nature and terms of such modification and change must be approved in writing by LESSOR and this Lease Agreement must be amended in writing to authorize the same.

### **1.3 Lessee Construction on Lease Premises.**

LESSEE shall have the right to construct improvements on the Leased Premises and this right shall continue in effect throughout the term of this Lease Agreement. LESSEE will, as a consideration for LESSOR's obligations set forth herein and this Lease Agreement, construct, at LESSEE's sole cost, a building or a series of buildings and structures on the Leased Premises. Throughout the term of this Lease Agreement and any extension thereof, LESSEE shall have the right to alter, modify, remodel and demolish any improvements LESSEE has constructed on the Leased Premises. LESSEE agrees to provide to LESSOR a complete set of plans and specifications detailing each improvement which LESSEE proposes to construct on the Leased Premises prior to commencing any construction. The plans and specifications will be reviewed by LESSOR only for compliance with the municipal code of Denton, Texas as well as any applicable environmental laws and/or regulations that are applicable to the LESSEE's operations. LESSOR's Solid Waste Division must approve, within twenty (20) days, or must provide LESSEE a written statement advising why the construction plans are not approved. Such approval by the Solid Waste Division will not be unreasonably withheld or delayed. Provided however, the Solid Waste Division's approval does not apply to any other approval required from the City's Planning Department, Permitting or Building Permit Departments, or other City departments. No approval of LESSOR shall be required with respect to any modifications or alterations or remodeling of the interior of any of the improvements. All improvements constructed or placed on the Lease Premises by LESSEE shall remain the property of LESSEE during the term of this Lease Agreement and any renewal or extension hereof. For real property fixtures, they shall remain the property of LESSEE, and upon the termination of this Lease, the LESSEE is under a duty to promptly, within sixty (60) days of the expiration of the term of this Lease Agreement, remove any and all improvements and fixtures installed or constructed by LESSEE with no damage to the leased premises. LESSEE agrees to surrender the premises to LESSOR in broom-clean condition. The LESSEE covenants to LESSOR that upon termination of this Lease the subject real property shall be free and clear of any and all recyclable materials or waste that LESSEE abandons on the subject real property. Once the premises have been surrendered by LESSEE, LESSOR shall determine within twenty (20) days the disposition of the \$5,000 security deposit which LESSEE shall pay to LESSOR before taking possession of the above-described Leased Premises at the beginning of this Lease. LESSOR shall advise LESSEE in writing at its address, as shown herein, of any deductions made regarding any damages suffered by the LESSOR by reason of LESSEE'S default regarding LESSEE'S covenant to surrender the leased premises in broom-clean condition. Further, should the operations of the LESSEE materially change either in size, location, rental amount or scope, then LESSEE and LESSOR shall confer and arrive at a reasonable additional security deposit amount to further secure LESSEE's performance of its obligations under this LEASE AGREEMENT.

#### **1.4 Easements.**

LESSOR shall provide to LESSEE, when reasonably required by LESSEE in the conduct of its business on the Leased Premises, but in no event later than completion of construction, at no additional consideration, nonexclusive rights-of-way or easements that it has the right to grant over, across and through the leased property; ingress and egress onto the leased property which are necessary for the operation of LESSEE's facilities on the Leased Premises as follows:

- (a) For connection of water and sanitary sewer facilities to the boundary of the Leased Premises;
- (b) For connection of telephone, electric and gas lines, as approved by the appropriate utility companies, to those installed at or upon the Leased Premises; and
- (c) For connection of on-site streets and/or roads for vehicular traffic, only to roads immediately adjacent to or near the Leased Premises.

All rights-of-way or easements granted or to be granted shall be located in such a way as to not unreasonably interfere with the orderly utilization of the LESSOR'S Landfill.

#### **1.5 Environmental Assessments Required by Lessor – Phase I and Phase II.**

Both a Phase I and Phase II final Environmental Study shall be conducted on the Leased Premises upon the termination of the Lease Agreement, by LESSEE's licensed professional consultant, with the costs of both of such Studies shall be fully and timely paid by LESSEE.

The final Phase I and Phase II Environmental Studies shall commence no later than thirty (30) days following the termination date of this Lease Agreement. LESSEE agrees to provide LESSOR with exact copies of all such studies within ten (10) days following LESSEE'S receipt of such Studies.

The parties agree that the LESSEE shall be solely and exclusively responsible for the satisfactory cleanup of any environmental contamination disclosed by the final Studies.

#### **1.6 Signs.**

LESSEE shall be entitled to erect, install, and maintain on the Leased Premises identification and advertising signs appropriate to its business; provided, however, that all such signs at all times shall be subject to the prior written approval of LESSOR as to location, size, shape, color and content. Said approval is conditioned upon the signs meeting the requirements of the applicable City ordinances of the City of Denton, Texas.

#### **1.7 Lien Claims.**

LESSEE hereby covenants to unconditionally indemnify LESSOR from and against, and hold LESSOR harmless from any and all lien claims of any nature whatsoever arising out of or in any manner connected with the construction, installation, erection, maintenance, repair, occupancy, use and/or operation of any improvements, facilities and/or equipment of LESSEE or any third person on or about the Leased Premises by or at the direction of or with the permission of LESSEE; and LESSEE further agrees that it shall, in the event any such liens are filed, forthwith



effect their removal and/or satisfaction. Provided, however, LESSEE shall have the right, at its sole cost and expense, and after having given LESSOR prior written notice of its intent to do so, to promptly contest by appropriate legal proceedings diligently conducted in good faith, the amount, validity or application, in whole or in part, of any such lien or liens, provided (i) such proceedings shall suspend the collection of such lien(s); (ii) neither the Leased Premises nor any rent therefor, nor any portion of same, would be in danger of attachment, forfeiture, loss or similar consequence; and (iii) that LESSEE shall first furnish security to the City's reasonable satisfaction to bond said lien or liens off of the Leased Premises.

#### **1.8 Inspection and/or Repair of Leased Premises.**

LESSEE shall at all times maintain the Leased Premises including all improvements thereon in good condition. LESSEE shall be responsible for all maintenance, repair and replacement of the Leased Premises and all improvements thereon except for repairs or replacements caused by the acts or negligence of LESSOR, its agents or employees.

#### **1.9 Warranty.**

LESSOR represents and warrants that it owns the Leased Premises and that LESSOR is fully authorized to enter into this Lease Agreement with LESSEE. In addition, LESSOR represents and warrants that it has not granted any mortgages or pledges of the tract of real property leased hereunder. It is understood and agreed that any mortgage, pledge, or other encumbrance of the property leased hereunder shall be subordinate to this Lease Agreement and that any such mortgage, pledge, or other encumbrance shall contain specific provisions providing that all of LESSEE's improvements or appurtenances on the property leased hereunder, as well as any products or other contents in or on said improvements or appurtenances, are excluded from such mortgage, pledge or encumbrance, and that LESSEE hereunder retains the right to remove any and all such improvements or appurtenances, as well as any products or other contents in or on said improvements or appurtenances, in accordance with the terms of this Lease Agreement, and that in the event of a foreclosure, LESSEE shall have the right to continue to occupy the Lease Premises pursuant to the terms of this Lease Agreement so long as LESSEE is not in default hereunder.

### **ARTICLE 2**

#### **LEASE TERM**

##### **2.1 Primary Term.**

The Primary Term of this Lease Agreement shall be for a term of ten (10) years from and after June 1, 2013, the Effective Date of this Lease Agreement, unless sooner terminated as provided for herein; provided that this Lease Agreement is approved by the Denton City Council.

##### **2.2 Renewal Terms.**

Provided that LESSEE is not in default, and provided that this Lease Agreement is otherwise in full force and effect, this Lease Agreement may be extended for two (2) additional terms of five (5) years each. The decision to extend the Lease Agreement must be a mutual decision made by

both LESSOR and LESSEE. Negotiations to extend this Lease Agreement are to begin at least one (1) year before the end of the Primary Term or the First Renewal Term (as the case may be) of this Lease Agreement, provided that the Lease Agreement is not in default at the time negotiations for extension are entered into.

### **2.3 Option to Lease Two Metal Buildings at 1001 South Mayhill Road, Denton, Texas.**

It may become necessary or appropriate during the Initial Term of the Lease for the LESSEE to move its operations. Recognizing this fact, should LESSEE not be in default under the terms of this Lease Agreement, at the time that LESSEE desires to exercise this option, LESSOR extends to LESSEE an option to LESSEE to lease one or two metal buildings, known as "Building 101" [9,695 square feet of rentable space; 3,128 square feet of office space] and "Building 102" [9,521 square feet of rentable space; 1,804 square feet of office space] located at 1001 South Mayhill Road, Denton, Denton County, Texas, which are being presently acquired by LESSOR [pending real estate purchase by the City – legal description to be furnished under separate cover later]. These Buildings are more particularly described in Exhibit "C" attached hereto. LESSEE shall make its own determinations as to whether or not said building or buildings are suitable for their operations. The terms of such option, including the rental amount and the term shall be negotiated separately from this Lease Agreement. If this option is exercised within twelve months from the Effective Date, the rental amount of Building 101 will be \$4.75 per square foot per year; and the Building 102 rental amount will be \$3.95 per square foot per year, payable in monthly payments, in advance.

### **2.4 Option to Lease an Additional Tract of Land**

During the initial term of the Lease Agreement, should LESSEE not be in default under this lease, then LESSEE shall have the right to lease an additional tract of land. Said option shall apply to a not less than five (5) acre but not greater than a ten (10) acre tract of land situated within the Gideon Walker Survey, Abstract No. 1330, located within the City of Denton, Denton County, Texas. The said tract of real estate is northwest and adjacent to the Leased Premises (Exhibit "A"), and is located within the Landfill buffer zone. The selection of this five to ten acre tract will be established only when LESSEE exercises this option, if ever. Should the LESSEE choose to lease the tract of land described herein, then the applicable rate and terms will be the same rental and same provisions that are provided for at that point in time, regarding this Lease. LESSEE will also have the non-exclusive right to use the LESSOR's (Solid Waste Department's) private road located within said tract, for ingress and egress access from LESSEE's site.

### **2.5 Assignment of Lease Agreement**

LESSEE shall not assign, sublet, mortgage or pledge this Lease Agreement or any interest herein or in the Leased Premises or any part thereof, nor shall any assignment, sublease or transfer of whatever kind of any interest of LESSEE herein by operation of law or by reason of LESSEE's bankruptcy become effective, without the prior written consent of LESSOR, which consent shall not be unreasonably withheld; provided however, that the City's refusal to give the City's consent to a potential assignee who is not as creditworthy as LESSEE, shall be deemed to be reasonable. Notwithstanding the foregoing, LESSEE shall have the right to assign this Lease Agreement or sublet the Lease Premises to an entity that is controlled by, or under common control with LESSEE, provided that LESSEE remains fully and primarily liable for all of its obligations under this Lease Agreement.

## **ARTICLE 3**

### **RENTALS**

#### **3.1 Rentals.**

The rental for the Lease Premises shall be SIXTEEN and ONE-HALF CENTS (\$.165) per square foot, per year for the first five (5) years of the Lease Term. For purposes of this Lease Agreement the "Certificate of Occupancy Date" is the date upon which LESSOR issues the building temporary occupancy permit. The first monthly rental payment due from LESSEE on June 1, 2013, to LESSOR, payable at the offices of LESSOR as set forth in Article 6.2 hereinbelow, on or before the first day of the first month, payable in advance, with equal payments of rental to be made on the first day of each month thereafter throughout the term of the Lease; Provided however, that the rental rate will be 50% of the lease rate for the real property described in this Lease, from the Effective Date of this Lease (June 1, 2013) to whichever of the following two dates first occurs: the date of issuance of the final Certificate of Occupancy for an on-site building, or November 30, 2013,

LESSOR and LESSEE agree that the rental amount is also subject however, to the terms of Rental Adjustment (indexing) that is reserved in this Article 3.1. The rental rate set forth hereinabove is for purposes of the Lease and shall be defined as the "Initial Base Rental Payment." Such Initial Base Rental Payment will be the rental due under the Lease for years one (1) through five (5) of the initial ten (10) year term of the Lease (the "Primary Term"). Prior to the commencement of the first (1st) day of the sixth (6th) year of the Primary Term, and prior to the commencement of each additional five (5) year period thereafter throughout the entire term of the Lease, including any renewal terms (a "Renewal Term"), the rental to be paid by LESSEE to LESSOR under the Lease shall be subject to adjustment based upon adjustments in the consumer price index, as hereinafter defined. The initial base rental payment shall be adjusted upward, downward, or unchanged prior to the commencement of the sixth (6th) year of the Lease to conform to that certain United States Bureau of Labor Statistics "Producer Price Index" now known as Series ID# PCU531210531210602. That product is named: Real estate brokerage, nonresidential property leases including land leases. Its base date is December, 2009. The starting date, for purposes of this Rental Adjustment is June 1, 2013. The adjustment at the beginning of year six (6) of the Lease will be accomplished by multiplying the initial base rental payment by a fraction, the numerator of which shall be such index as of the most recent date published prior to the date of adjustment and the denominator of which shall be the most recently published index as of the Commencement Date. The adjustment for each subsequent five (5) year period will be calculated in a similar manner except that rather than using the initial base rental payment as the base rentals from which adjustments will be made, the rental figure for the then current year will be substituted for such initial base rental payment. In no five (5) year period may the rental be increased or decreased more than twenty-five percent (25%) of the rental applicable during the five (5) year period immediately preceding the five (5) year period for which an adjustment is to be made. If the index above referred to shall be discontinued, the parties hereto shall attempt to agree upon a substitute index or formula. In the event of dispute between the parties as to the amount of any adjustment, the rates shall be established through the dispute resolution procedures.

#### **3.2 Taxes.**

LESSEE agrees to pay all sales and/or use taxes and any and all ad valorem assessments and/or taxes which may be legally exacted, made, and charged upon and/or levied and/or assessed against LESSEE's property on the Leased Premises, before the same shall become delinquent; provided, however, LESSEE shall have the right, at its sole cost and expense and after having given LESSOR prior written notice of its intention to do so, to contest by appropriate legal proceedings diligently conducted in good faith, the validity, amount or application, in whole or in part, of such taxes, levies and/or assessments provided (i) such proceedings will suspend the collection of the tax, levy, or assessment; and (ii) the Lease Premises, nor any rent therefrom, nor any portion of it is in danger of seizure, forfeiture, sale, loss or similar consequences.

### **3.3 Late Charges on Rentals.**

If any installment of rental due from LESSEE is not received by LESSOR within twenty (20) days of the date upon which it is due, without any notice or demand for payment to LESSEE being necessary, LESSEE will pay to LESSOR the additional sum of Fifty Dollars (\$50.00) as a late charge for each late payment. The late charge represents the reasonable time and efforts of City staff expended in order to enforce the rental obligation. Acceptance of any late charge shall not constitute a waiver of LESSEE's default with respect to the overdue amount, nor prevent LESSOR from exercising any other rights and remedies available to LESSOR.

### **3.4 No Additional Fees**

There shall be no additional fees or assessments made by LESSOR for LESSEE's use or occupancy of the Lease Premises; provided however, that LESSEE shall remain solely responsible for any impact fee, connection fee, tap fee, building fees, or any other municipal fees charged by the City of Denton, Texas that are applicable to the Leased Premises; and LESSEE shall timely pay same.

## **ARTICLE 4**

### **OPERATIONS**

#### **4.1 Pollution Control.**

LESSEE agrees that it shall use its commercially reasonable best efforts to comply with all applicable federal, state and local laws, regulations and the common law, as they may exist currently, or as they may be amended in the future, pertaining to protection of the environment or human health and safety at the leased premises and/or in the vicinity of any of its operations or activities that may be permitted hereunder.

#### **4.2 Compliance with Environmental Laws and Indemnification.**

During the term of this Lease Agreement, LESSEE shall fully comply with all applicable federal, state and local laws, regulations and the common law, as they may exist currently or as they may be amended in the future, pertaining to protection of the environment or human health and safety at the leased premises.

LESSOR warrants and represents that at the commencement of this Lease Agreement, that to its knowledge there is no Hazardous Substance (as defined hereinbelow) including any petroleum,

petroleum product, or other types of hydrocarbons in or on the Leased Premises in contravention of any federal, state or local laws, regulations or the common law pertaining to protection of the environment or human health and safety.

Notwithstanding any provision in this Lease Agreement to the contrary, it is expressly understood and agreed that the LESSOR hereby agrees to indemnify to the extent provided by applicable law, defend and hold harmless the LESSEE, only to the extent permitted by applicable law, its officers, employees, contractors, agents, customers, licensees, invitees and/or visitors and any other person for or on whose behalf LESSOR is liable, harmless from and against any and all claims, obligations, liabilities, costs, expenses (including attorney's fees), losses, suits, fines, penalties or demands, made or sought by or on behalf of any person, firms, corporation or government authority whomsoever, based upon or arising out of any obligation, liability, loss, damage or expense, of whatever nature or kind, contingent or otherwise, known or unknown, incurred under or imposed by any provision of federal, state or local law or regulation, or common law, pertaining to protection of the environment or human health and safety in or on the Leased Premises prior to the Effective Date.

Notwithstanding any provision in this Lease Agreement to the contrary, it is expressly understood and agreed that the LESSOR does not assume or agree to be responsible for, and LESSEE hereby agrees to indemnify, defend and hold LESSOR, its officers, employees, contractors, agents, customers, licensees, invitees and/or visitors and any other person for or on whose behalf LESSOR is liable, harmless from and against any and all claims, obligations, liabilities, costs, expenses (including attorneys' fees), losses, suits, fines, penalties, or demands, made or sought by or on behalf of any person, firm, corporation or government authority whomsoever, based upon or arising out of the handling, storage or disposal of Hazardous Substances by LESSEE, LESSEE's agent or anyone on or about the Leased Premises by or at the direction of LESSEE or with the permission of LESSEE during the term of this Lease Agreement.

For purposes of this Lease Agreement, the term "Hazardous Substance" or "Hazardous Substances" means that term as defined in Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), but it also includes the term "Regulated Substance" as defined in Section 6991(2), and the term "Hazardous Waste" as defined in Section 6903(5), of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901, et seq. ("RCRA"), including all regulations issued pursuant to any of the above statutes, as well as any other contaminant, oil, petroleum, petroleum product or byproduct, radioactive material or byproduct and any unsafe, noxious, toxic or hazardous substance or similar material regulated as a hazardous substance under any applicable state, federal or local law, and any other applicable environmental, land use or similar act, statute or regulation existing as of the date of this Lease Agreement or thereafter.

The indemnifications provided by this Article shall specifically and reciprocally cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party.

The foregoing environmental indemnity provisions shall survive for a period of five (5) years after the expiration or termination of this Lease Agreement and any renewals hereof.

#### **4.3 Compliance with Laws and Regulations.**

LESSEE's exercise of such rights and/or privileges as may be extended it hereunder shall at all times be in full compliance with all applicable laws, rules, and regulations, including safety regulations, of the City of Denton, Texas, the State of Texas, the United States, and other governmental authorities now or hereafter having jurisdiction thereof and/or any of their duly empowered agencies and/or instrumentalities. A copy of all building permits, licenses, and similar authorizing documents will be promptly provided to the LESSOR.

#### **4.4 Lessee Insurance.**

For the term of this Lease Agreement and any renewal thereof, LESSEE will maintain, at its own expense, the following insurance coverage:

- (a) Workers' Compensation providing statutory benefits, and Employers' Liability coverage with minimum limits of \$1,000,000 per each occurrence; and
- (b) Comprehensive General Liability insurance coverage with minimum limits of \$2,000,000 per occurrence, combined single limit, for bodily injury and property damage. Coverage shall include contractual liability; and
- (c) Automobile liability insurance coverage with minimum limits of \$1,000,000 per occurrence, combined single limit; and
- (d) Casualty property insurance on the LESSEE constructed facilities on-site in an appropriate amount reasonably determined by the agreement of LESSEE and LESSOR, which amount shall take into account the construction costs of the LESSEE's facilities and other relevant factors.

LESSEE shall provide LESSOR with a certificate evidencing the insurance required hereunder together with written evidence of premium payment. All such policies of insurance shall require that LESSOR and LESSEE be given at least thirty (30) days prior written notice of any modification, termination and/or cancellation of coverage. The insurance policies described in (b) and (c) above shall name LESSOR as an additional insured party. All insurance policies belonging to LESSEE shall be issued through companies that shall have a minimum A.M. Best Company rating of "A-," in addition to a minimum financial size category of "VI" or "VII," or alternatively a Standard and Poor's rating of "BBB" or better.

#### **4.5 Lessor's Acceptance of Aqueous By-Product of the Sugar Concentration Process.**

LESSOR (the City's Solid Waste Department) agrees to accept from LESSEE during the Term of this Lease Agreement up to, but no more than fifteen thousand (15,000) gallons per LESSEE's operating day, of the aqueous-based by-product of the sugar concentration process conducted by LESSEE, subject however, to the product's acceptability per Texas Commission on Environmental Quality ("TCEQ") requirements, at no cost to LESSEE; provided that LESSEE delivers said product to LESSOR's storage tanks, but not otherwise.

#### **4.6 Termination.**

This Lease Agreement shall terminate pursuant upon the expiration of its Term, or extension of Term (if applicable), or upon the subsequent written agreement of LESSOR and LESSEE. Upon termination, LESSEE shall be entitled to remove all of its personal property from the building(s) and any equipment that LESSEE has installed in the building, and shall thereafter promptly quit and surrender the Leased Premises to LESSOR in broom-clean condition. LESSEE shall additionally remove all feedstock, recyclables and recycling materials, by-products, end-products, and chemical supplies from the Leased Premises, and shall thereafter quit and surrender the Leased Premises to LESSOR; subject to the provisions of Article 1.3 hereinabove.

#### **4.7 Events of Default.**

The following shall be "Events of Default" under this Lease Agreement and the terms "Event of Default" or "Default" shall mean whenever they are used in this Lease Agreement, any one or more of the following events:

- (a) The insolvency, assignment for the benefit of creditors, adjudication as a bankrupt of LESSEE or the appointment of a receiver for substantially all of the LESSEE's property and/or LESSEE's interest in this Lease Agreement; or
- (b) The issuance of execution against LESSEE's interest in this Lease Agreement or any legal process which by operation of law would cause LESSEE's interest in this Lease Agreement to pass to any person other than LESSEE or its successor assignee or sublessee; or
- (c) The failure or refusal of LESSEE to pay or cause to be paid any lease rental payment, charge and/or assessment hereunder or any installment thereof when due and the continuance of such failure for a period of twenty (20) days after written notice thereof has been sent by LESSOR to LESSEE at the address shown herein for LESSEE; or
- (d) The failure or refusal of LESSEE and/or LESSOR to perform any agreement, covenant, condition, obligation and/or undertaking herein contained or required by operation of law and/or to observe or comply with any of the terms provisions or conditions of this Lease Agreement, and the continuance of such for a period of thirty (30) days after written notice thereof has been sent by LESSOR to LESSEE at the address shown herein for LESSEE; or
- (e) The failure of LESSEE and/or LESSOR in the observance or performance of any material term, obligation or covenant required to be performed by LESSEE and/or LESSOR under this Lease Agreement or by operation of law, and the continuance of such for a period of thirty (30) days after written notice thereof has been sent by LESSOR to LESSEE at the address shown herein for LESSEE.

#### **4.8 Holding Over.**

If LESSEE shall, with or without the consent of LESSOR, hold over after the expiration or sooner termination of the term of this Lease Agreement, the resulting tenancy shall, unless otherwise mutually agreed upon in writing, shall be on a month-to-month basis only. During such month-to-month tenancy, LESSEE shall pay to LESSOR the same rentals, plus an additional payment of holdover rent of twenty-five (25) percent, per month, of the then

applicable rent, payable monthly along with its other rental payment due hereunder, as set forth herein, unless a different rate(s) shall be agreed upon, and LESSEE shall be bound by all of the provisions of this Lease Agreement insofar as they may be pertinent. LESSOR shall have the right, after the expiration of the term and/or extension to provide LESSEE with a 30-day notice letter notifying LESSEE that the holdover tenancy will end thirty (30) days thereafter.

#### **4.9 Waiver of Breach of Default -- Cumulative Remedies.**

Waiver by any party of any breach or Default of this Lease Agreement shall not be deemed a waiver of similar or other breaches or Defaults, nor shall the failure of any party to take action by reason of any such breach or Default deprive such party of the right to take action at any time while such breach or Default continues. The rights and remedies created by this Lease Agreement shall be cumulative and nonexclusive of those to which the parties may be entitled pursuant to law. Right of exercise of all such rights and remedies is hereby reserved. The use and availability of one remedy shall not be taken to exclude or waive the right to use of another. In order to entitle any party to exercise any remedy reserved to it in this Lease Agreement, it shall not be necessary to give any notice, other than such notice as is herein expressly required.

### **ARTICLE 5 MISCELLANEOUS**

#### **5.1 Quiet Enjoyment.**

LESSOR covenants that during the term of this Lease Agreement and for so long as LESSEE shall make timely payment of rentals due hereunder, and shall perform all covenants on its part to be performed, LESSEE shall and may peaceably and quietly have, hold and enjoy the Leased Premises.

In the event of bankruptcy, insolvency, assignment for benefit of creditors, or foreclosure of any mortgage or other encumbrances, by entry or by sale, LESSEE, if it is not then in default, shall peaceably hold and enjoy the Leased Premises for the remainder of the unexpired term of the Lease Agreement upon the same terms, covenants, and conditions as in this Lease Agreement.

#### **5.2 Notices.**

All notices and other communications required or permitted to be given by any provision of this Agreement shall be in writing and mailed (certified or registered mail, postage prepaid, return receipt requested) or sent by hand or overnight courier, and such notices shall also be sent by facsimile transmission (with acknowledgment received), charges prepaid and addressed to the intended recipient as follows, or to such other address or number as may be specified from time to time by like notice to the Parties. A courtesy copy of such notice or other communication shall also be sent electronically via e-mail to the e-mail addresses provided in the contact information below; provided, however, that such e-mail copies will not constitute Notice as defined in this Section 5.2:

(a) If to the LESSOR:

City of Denton, Texas  
215 East McKinney Street  
Denton, TX 76201  
Attention: City Manager



Facsimile: 940-349-8596

With a copy to:

City of Denton, Texas  
1527 South Mayhill Road  
Denton, TX 76208  
Attention: General Manager of Solid Waste Services  
Telephone: 940-349-8044  
Email: [Vance.Kemler@cityofdenton.com](mailto:Vance.Kemler@cityofdenton.com)

If to LESSEE:

Master Recycling of Texas, LLC  
Bill Nazaroff, President  
1980 Reservoir Street  
Pomona, CA 91766  
(909) 891-4262  
Email: [bill@masterrecycling.com](mailto:bill@masterrecycling.com)

Chris Ball  
1301 South Mayhill Road  
Denton, Texas 76208  
(214) 228-2018  
E-mail: [chris@masterrecycling.com](mailto:chris@masterrecycling.com)

Shawn N. Guy, Esq.  
Law Office of Shawn N. Guy  
P.O. Box 272  
Morro Bay, CA 93443  
(888) 489-9369  
E-mail: [sngfirm@gmail.com](mailto:sngfirm@gmail.com)

Richard C. Seltzer, Esq.  
2211 Norfolk Street, Suite 400  
Houston, Texas 77098-4044  
(713) 522-7333  
E-mail: [rcs611@aol.com](mailto:rcs611@aol.com)

Any Party may from time to time specify a different address for notices by like notice to the other Party. All notices and other communications given in accordance with the provisions of this Lease Agreement shall be effective upon receipt of the same.

### **5.3 Substitution of Performance by Lessor.**

If LESSEE shall fail to do anything required to be done by it under the terms of this Lease Agreement, except to pay rent and other charges, LESSOR may, after thirty (30) days written notice to LESSEE, at LESSOR's sole option, do such act or thing on behalf of LESSEE, and upon notification of the cost thereof to LESSOR, LESSEE shall promptly pay to LESSOR the

amount of that cost. In case of emergency, LESSOR may perform, but is not obligated to perform, any act or do anything reasonably necessary on behalf of LESSEE and upon notification of the cost thereof to LESSEE, LESSEE shall pay said cost to LESSOR within thirty (30) days from the date of LESSOR'S written claim to LESSEE.

#### **5.4 Eminent Domain.**

If all or a portion of the Leased Premises or all or any portion of LESSOR's other property comprising the Leased Property shall be taken or sold in any proceeding by public authorities, by means of condemnation, expropriation, appropriation or otherwise be acquired for public or quasi-public purposes, there shall be an equitable abatement or refund of the rental paid by LESSEE under Article 3.1 above from any date of award to LESSOR proportionate to the amount taken. Nothing herein shall affect or diminish LESSEE's right to seek compensation for any portion of the Leased Premises taken and LESSEE shall be entitled to all such compensation for its provable loss or damage.

In the event the taking of the Leased Premises or all or a part of LESSOR's other property comprising the Leased Premises is total, this Lease Agreement shall terminate, and LESSEE shall be released from all obligations hereunder; except for any sums of money owed to LESSOR at the date of termination of this lease, which amounts shall be paid to LESSOR within thirty (30) days.

In the event the taking of the Leased Premises or LESSOR's other property comprising the Landfill is less than total, then LESSEE shall have the option to terminate this Lease Agreement if continuation of its operations on the Lease Premises is substantially impaired and economically impractical.

#### **5.5 Substitution of Performance by Lessee.**

If LESSOR shall fail to do anything required to be done by it under the terms of this Lease Agreement, LESSEE may, after sixty (60) days written notice to LESSOR, at LESSEE's sole option, do such act or thing on behalf of LESSOR, and upon notification of the reasonable cost thereof to LESSOR, may deduct said amount from any amount owed by LESSEE to LESSOR. In case of emergency, LESSEE may perform any act or do anything reasonably necessary on behalf of LESSOR and upon notification of the cost thereof to LESSOR, may deduct said amount from the amount of rental then owed by LESSEE to LESSOR. If no amount is presently owed by LESSEE to LESSOR, then LESSOR shall pay such amount to LESSEE on demand.

#### **5.6 Recordation.**

Neither LESSOR nor LESSEE shall record this Lease Agreement without the prior written consent of the other party. LESSOR and LESSEE may execute and acknowledge a "short form" memorandum of this Lease Agreement for recording purposes.

#### **5.7 Entire Agreement.**

This Lease Agreement embodies the entire agreement between the parties with respect to the leasing and use of the Leased Premises. There are no representations, terms, conditions, covenants or agreements between the parties which are not mentioned or contained herein. This Lease Agreement shall completely and fully supersede all other prior agreements both written

and oral, between the parties pertaining to the Leased Premises. No party to any such prior agreement hereafter will have any rights thereunder, but shall look solely to this Lease Agreement for definition and determination of its rights, liabilities, or responsibilities relating to the aforesaid matters set forth herein.

#### **5.8 Captions.**

The article and the subsection headings and captions contained herein are included for convenience only and shall not be considered a part hereof or affect in any manner the construction or interpretation of this Lease Agreement.

#### **5.9 Severability.**

The parties agree that if it should ever be held by a court of competent jurisdiction that any one or more articles, subsections, clauses or provisions of this Lease Agreement are invalid or ineffective for any reason, any such article, subsection, clause or provision shall be deemed separate from the remainder of this Lease Agreement and shall not affect the validity and enforceability of such remainder.

#### **5.10 Successors and Assigns.**

The covenants, terms, conditions and obligations set forth and contained in this Lease Agreement shall be binding upon and inure to the benefit of LESSOR and LESSEE and their respective successors and assigns.

#### **5.11 Disputes and Governing Law.**

This Lease Agreement shall be governed by and construed solely in accordance with the laws of the State of Texas. Exclusive venue for any claim or cause of action under this Agreement shall be, as the case may be, either in the District Courts of Denton County, Texas, or the federal district courts of the Eastern District of Texas, Plano or Sherman Division.

**IN WITNESS WHEREOF**, this Lease Agreement has been executed by the duly authorized City Manager of LESSOR; and by the duly-authorized officer of LESSEE, in multiple counterparts, each of which, for all purposes, shall be deemed an original and all of which shall evidence but one agreement.

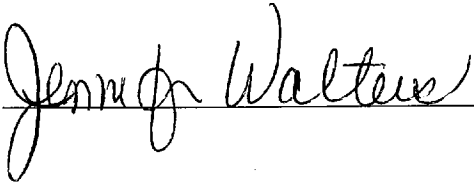
**EXECUTED** this 4th day June, 2013; but to be effective, ratified and confirmed, from and after the 1st day of June, 2013.

**"LESSOR"**

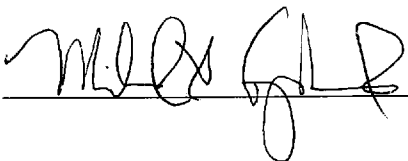
THE CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
\_\_\_\_\_  
GEORGE C. CAMPBELL, City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By:   
\_\_\_\_\_

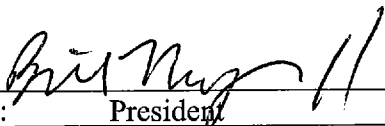
APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By:   
\_\_\_\_\_

**IN WITNESS WHEREOF**, this Lease Agreement has been executed by LESSEE in the presence of the undersigned witnesses, in multiple copies, each of which, for all purposes, shall be deemed an original and all of which shall evidence but one agreement.

**"LESSEE"**

MASTER RECYCLING OF TEXAS, INC.  
A Texas Limited Liability Corporation

By:   
\_\_\_\_\_  
Title: President  
Date: May 10, 2013

WITNESS:

By: KSchlose  
Kelly Schlose

ATTEST:

CORPORATE SECRETARY:

By: Bill Nazaroff  
Bill Nazaroff

APPROVED AS TO LEGAL FORM:

By: Shawn N. Guy  
Shawn N. Guy

ITS LEGAL COUNSEL

# EXHIBIT A



## Coleman & Assoc. Land Surveying

P.O. Box 686

Denton, Texas 76202

Phone (940)565-8215 Fax (940)565-9800

### 3,500 Acre Tract 1

FIELD NOTES to all of that certain tract of land situated in the G. Walker Survey Abstract Number 1330, City of Denton, Denton County Texas and being a part of the called 29.612 acre tract described in the deed from Harold C. Coe to City of Denton, Texas recorded under Clerks File Number 95-R0072063 of the Real Property Records of Denton County, Texas; the subject tract being more particularly described as follows (Bearings basis is Texas Coordinate System of 1983, North Central Zone-4202):

BEGINNING for the Northeast corner of the tract being described herein at a 1/2 inch iron rod with a yellow plastic cap stamped "Coleman RPLS 4001" set (herein after referred to as 1/2"IRS) in the East line of the said 29.612 acre tract from which a "PK" nail set at the Northeast corner thereof in Treatment Plant Road bears North 00 Degrees 35 Minutes 46 Seconds West a distance of 37.9 feet;

THENCE South 00 Degrees 35 Minutes 46 Seconds East with the East line of the said 29.612 acre tract a distance of 280.53 feet to a 1/2"IRS for the Southeast corner of the herein described tract and the Northeast corner of a 5.614 acre tract;

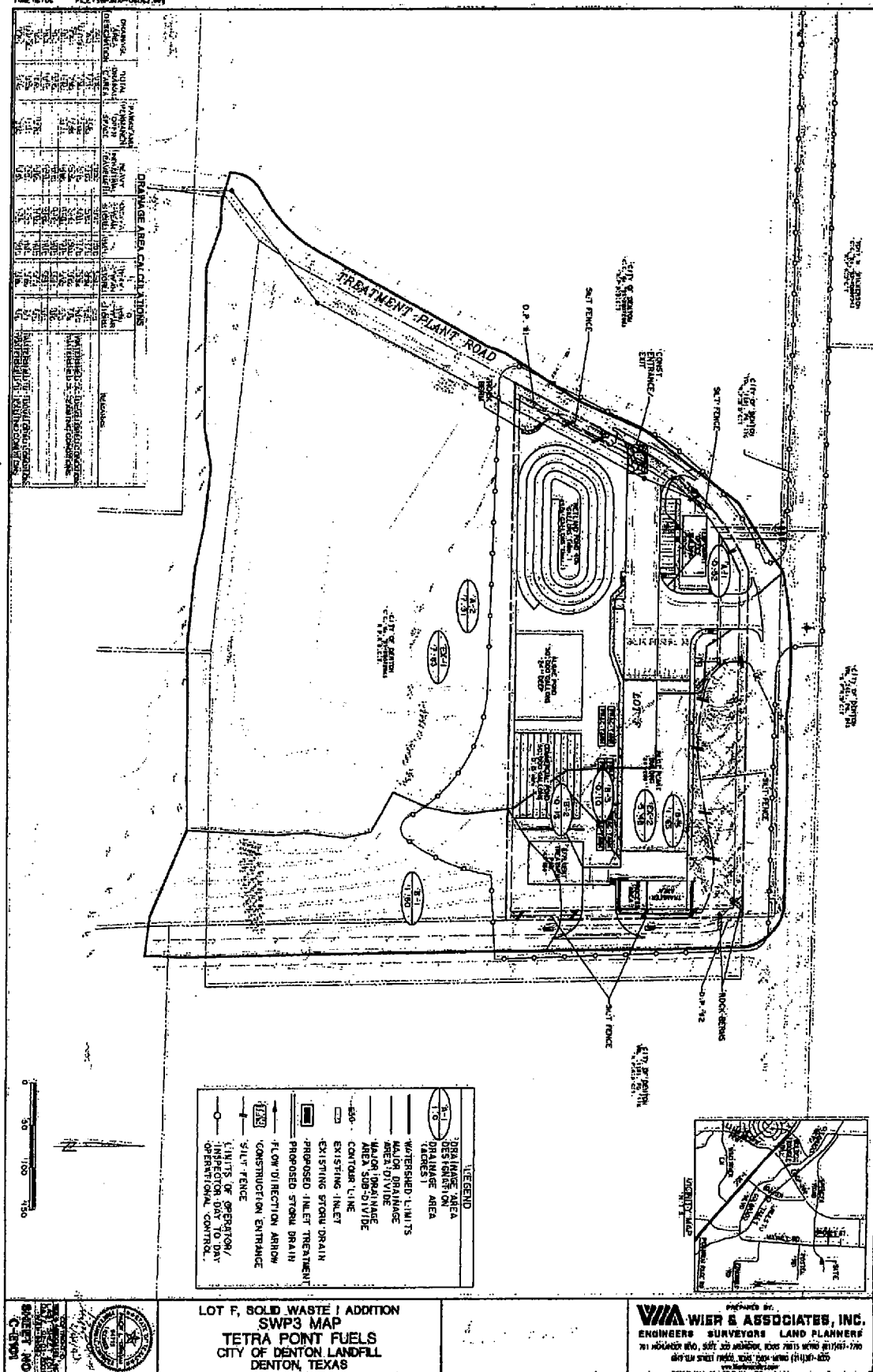
THENCE North 89 Degrees 19 Minutes 47 Seconds West across the 29.612 acre tract with the North line of the said 5.614 acre tract a distance of 626.39 feet to a 1/2"IRS for the Northwest corner thereof on the East side of Treatment Plant Road;

THENCE North 27 Degrees 44 Minutes 45 Seconds East along the East side of Treatment Plant Road across the 29.612 acre tract a distance of 175.54 feet to a 1/2"IRS for the beginning of a curve to the right having a radius of 265.00 feet;

THENCE Northeasterly along the arc of the said curve an arc length of 188.93 feet (chord bearing North 48 Degrees 10 Minutes 12 Seconds East a distance of 184.95 feet) to a 1/2"IRS for the Northwest corner of the herein described tract;

THENCE South 89 Degrees 13 Minutes 00 Seconds East continuing along the South side of Treatment Plant Road across the 29.612 acre tract a distance of 403.93 feet to the PLACE OF BEGINNING and enclosing 3,500 acres of land.

NAME: 15105 FILE: JPM/AN-05052.d



## EXHIBIT "B" TO ORDINANCE

ORDINANCE NO. 2013-274

AN ORDINANCE APPROVING A FIRST AMENDMENT TO A LEASE AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS, AND MASTER RECYCLING OF TEXAS, INC. TO BE EXECUTED BY THE CITY MANAGER AND RELATING TO A CERTAIN 3.5 ACRE TRACT OF LAND SITUATED IN THE GIDEON WALKER SURVEY, ABSTRACT NUMBER 1330, AND A CERTAIN 1.924 ACRE TRACT OF LAND SITUATED IN THE G. WALKER SURVEY, ABSTRACT NUMBER 1330, IN THE CITY OF DENTON, DENTON COUNTY, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 4, 2013, the City Council of the City of Denton, Texas, approved Ordinance No. 2013-143, which authorized execution of a Lease Agreement by and between the City of Denton, Texas, (Lessor) and Master Recycling of Texas, Inc., a Corporation (Lessee); and

WHEREAS, Lessor and Lessee agreed to an Option in said Lease Agreement allowing Lessee to lease two additional buildings, and associated acreage, for the purpose of expansion of Lessee's processing centers; and

WHEREAS, Lessee has exercised the Option for the lease of additional buildings and acreage, and the parties desire to alter the terms of the original lease; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager is hereby authorized to execute a First Amendment with Master Recycling of Texas, Inc., in substantially the form attached and incorporated herein by reference.

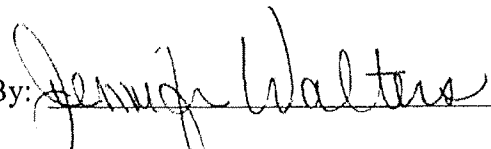
SECTION 2. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 15<sup>th</sup> day of October, 2013.

  
MARK A. BURROUGHS, MAYOR

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 



STATE OF TEXAS           §

COUNTY OF DENTON       §

**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN  
THE CITY OF DENTON, TEXAS AND MASTER RECYCLING OF TEXAS, INC.**

This First Amendment to Lease Agreement (hereafter the "Lease Agreement") is made and entered into as of the Effective Date, as set forth below, by and between THE CITY OF DENTON, TEXAS (hereinafter sometimes referred to as "LESSOR" and/or "the City"), and MASTER RECYCLING OF TEXAS, INC. ("LESSEE").

WHEREAS, Lessor and Lessee entered a Lease Agreement on June 4, 2013 setting forth terms and conditions whereby Lessee would lease certain premises from Lessor for the purpose of construction and operation of a processing and ethanol production plant to receive containers and bulk liquids containing sugar conversion of those materials into an ethanol fuel, as well as other operations associated with containerized liquid drink products, which may include, but not be limited to, the packaging and repackaging of liquid drink products to return them to a marketable condition or for use in the production of ethanol; and

WHEREAS, Lessor and Lessee agreed to an Option in said Lease Agreement allowing Lessee to lease two additional buildings, and associated acreage, generally located at 1001 Mayhill Road, and known as Buildings 101 and 102, Exhibits "C" and "D", for the purpose of expansion of Lessee's processing centers; and

WHEREAS, Lessee has exercised the Option for the lease of the additional buildings and acreage; and

WHEREAS, Lessor and Lessee desire to alter the term of the original Lease Agreement in light of the exercise of the option;

NOW, THEREFORE, Lessor and Lessee, intending to be legally bound, do hereby AGREE as follows to this First Amendment to that certain above referenced Lease and further agree that unless herein amended, the terms of the Original Lease of June 4, 2013 remain in full force and effect:

**ARTICLE 2  
LEASE TERM**

**2.1.1 Primary Term.**

The Primary Term of this Lease Agreement shall be for a term of twenty (20) years from and after the Effective Date of this Lease Agreement Amendment, unless sooner terminated as provided for herein.

## **2.1.2 Renewal Terms.**

Provided that LESSEE is not in default, and provided that this Lease Agreement is otherwise in full force and effect, this Lease Agreement may be extended for two (2) additional terms of ten (10) years each. The decision to extend the Lease Agreement must be a mutual decision made by both LESSOR and LESSEE. Negotiations to extend this Lease Agreement are to begin at least one (1) year before the end of the Primary Term or the First Renewal Term (as the case may be) of this Lease Agreement, provided that the Lease Agreement is not in default at the time negotiations for extension are entered into.

## **ARTICLE 3 RENTALS**

### **3.1.1 Rentals.**

As to the leased property located at 1301 South Mayhill Road and depicted in Exhibits "A" and "B", the rental for these Lease Premises shall be SIXTEEN and ONE-HALF CENTS (\$.165) per square foot, per year for the first five (5) years of the Lease Term. For purposes of this Lease Agreement the "Certificate of Occupancy Date" is the date upon which LESSOR issues the building temporary occupancy permit. The first monthly rental payment is due from LESSEE on June 1, 2013, to LESSOR, payable at the offices of LESSOR as set forth in Article 6.2 hereinbelow, on or before the first day of the first month, payable in advance, with equal payments of rental to be made on the first day of each month thereafter throughout the term of the Lease; provided however, that the rental rate will be 50% of the lease rate for the real property described in this Lease, from the Effective Date of the Original Lease (June 4, 2013) to whichever of the following two dates first occurs: the date of issuance of the final Certificate of Occupancy for an on-site building, or February 28, 2013.

As to the leased property located at 1001 Mayhill Road, Buildings 101 and 102 and associated acreage, and depicted in Exhibits "C" and "D", the rental for these Lease Premises shall be as set forth in Article 2, Section 2.3. The first monthly rental payment is due from LESSEE on November 1, 2013, to LESSOR, payable at the offices of LESSOR as set forth in Article 6.2 hereinbelow, on or before the first day of the first month, payable in advance, with equal payments of rental to be made on the first day of each month thereafter throughout the term of the Lease; provided however, that the rental rate will be 50% of the lease rate for the real property described in this Lease, from the Effective Date of this Amendment to whichever of the following two dates first occurs: the date of issuance of the final Certificate of Occupancy for an on-site building, or January 31, 2014.

LESSOR and LESSEE agree that the rental amount is also subject however, to the terms of Rental Adjustment (indexing) that is reserved in this Article 3.1. The rental rate set forth hereinabove is for purposes of the Lease and shall be defined as the "Initial Base Rental Payment." Such Initial Base Rental Payment will be the rental due under the Lease for years one (1) through five (5) of the initial twenty (20) year term of the Lease (the "Primary Term"). Prior to the commencement of the first (1st) day of the sixth (6th) year of the Primary Term, and prior to the commencement of each additional five (5) year period thereafter throughout the entire

term of the Lease, including any renewal terms (a "Renewal Term"), the rental to be paid by LESSEE to LESSOR under the Lease shall be subject to adjustment based upon adjustments in the consumer price index, as hereinafter defined. The initial base rental payment shall be adjusted upward, downward, or unchanged prior to the commencement of the sixth (6th) year of the Lease to conform to that certain United States Bureau of Labor Statistics "Producer Price Index" now known as Series ID# PCU531210531210602. That product is named: Real estate brokerage, nonresidential property leases including land leases. Its base date is December, 2009. The starting date, for purposes of this Rental Adjustment is June 1, 2013. The adjustment at the beginning of year six (6) of the Lease will be accomplished by multiplying the initial base rental payment by a fraction, the numerator of which shall be such index as of the most recent date published prior to the date of adjustment and the denominator of which shall be the most recently published index as of the Commencement Date. The adjustment for each subsequent five (5) year period will be calculated in a similar manner except that rather than using the initial base rental payment as the base rentals from which adjustments will be made, the rental figure for the then current year will be substituted for such initial base rental payment. In no five (5) year period may the rental be increased or decreased more than twenty-five percent (25%) of the rental applicable during the five (5) year period immediately preceding the five (5) year period for which an adjustment is to be made. If the index above referred to shall be discontinued, the parties hereto shall attempt to agree upon a substitute index or formula. In the event of dispute between the parties as to the amount of any adjustment, the rates shall be established through the dispute resolution procedures.

**IN WITNESS WHEREOF**, this Lease Agreement Amendment has been executed by the duly authorized City Manager of LESSOR; and by the duly authorized officer of LESSEE, in multiple counterparts, each of which, for all purposes, shall be deemed an original and all of which shall evidence but one agreement.

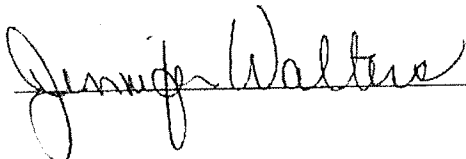
**EXECUTED** this 15<sup>th</sup> day October, 2013; but to be effective, ratified and confirmed, from and after the 1<sup>st</sup> day of June, 2013.

**"LESSOR"**

THE CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL, City Manager

**ATTEST:**  
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: Anita Burgess

IN WITNESS WHEREOF, this Lease Agreement has been executed by LESSEE in the presence of the undersigned witnesses, in multiple copies, each of which, for all purposes, shall be deemed an original and all of which shall evidence but one agreement.

"LESSEE"

MASTER RECYCLING OF TEXAS, INC.  
A Texas Limited Liability Corporation

By: Bill Nazaroff  
Title: CEO  
Date: 9-17-13

WITNESS:

By: \_\_\_\_\_

ATTEST:  
CORPORATE SECRETARY:

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
LEGAL COUNSEL

## Exhibit C



## Coleman & Assoc. Land Surveying

P.O. Box 686  
Denton, Texas 76202  
Phone (940)565-8215 Fax (940)565-9800

### RONJON Lease Area 1.924 acres of land

FIELD NOTES to all of that certain tract of land situated in the G. Walker Survey Abstract Number 1330, City of Denton, Denton County Texas and being a part of the called 4.62 acre tract described in the deed from Denmiss, LLC to the City of Denton recorded in Document Number 2013-84330 of the Real Property Records of Denton County, Texas and also being a part of the called 84.8193 acre tract described in the deed to the City of Denton recorded in Volume 2431, Page 843 of the said Real Property Records; the subject parcel being more particularly described by bearings based on the Texas Coordinate System of 1983, North Central Zone-4202 as follows:

BEGINNING at an "X" in concrete found at the Northwest corner of the tract being described herein at the Northwest corner of the said 4.62 acre tract on the dedicated East right-of-way line of Mayhill Road as shown by the plat of RONJON Group Business Park recorded in Cabinet Q, Page 350 of the Plat Records of Denton County, Texas;

THENCE South 89 Degrees 33 Minutes 47 Seconds with the North line of the 4.62 acre tract a distance of 413.21 feet to a 1/2 inch iron rod found at the Northeast corner thereof;

THENCE Southerly across the 84.8193 acre tract along the top edge of a graded area the following three calls:

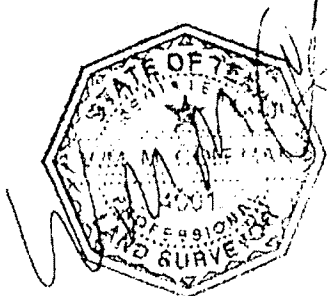
1. South 43 Degrees 59 Minutes 21 Seconds East a distance of 34.47 feet to a 1/2 inch iron rod set with a yellow plastic cap stamped "COLEMAN RPLS 4001" (herein after referred to as 1/2IRS);
2. South 04 Degrees 41 Minutes 13 Seconds East a distance of 133.48 feet to a 1/2IRS;
3. South 34 Degrees 19 Minutes 18 Seconds West a distance of 68.23 feet to a 1/2IRS on the West line of the 84.8193 acre tract and the East line of the 4.62 acre tract;

THENCE Westerly across the 4.62 acre tract the along the Southern edge of the graded area the following three calls:

1. South 76 Degrees 55 Minutes 40 Seconds West a distance of 56.12 feet to a 1/2IRS;
2. North 89 Degrees 20 Minutes 28 Seconds West a distance of 78.61 feet to a 1/2IRS;
3. North 06 Degrees 19 Minutes 12 Seconds West a distance of 54.65 feet to a 1/2IRS on the South line of Lot 1-R, Block A, RONJON Group Business Park as shown by the plat;

THENCE North 89 Degrees 22 Minutes 47 Seconds West with the South line of the said Lot 1-R a distance of 273.35 feet to a 1/2 inch iron rod found at the Southwest corner thereof and a reentrant corner of the 4.62 acre tract on the dedicated East right-of-way line of Mayhill Road;

THENCE North 01 Degrees 00 Minutes 57 Seconds East with the West line of the 4.62 acre tract same being the West line of Lot 1-R and with the said East right-of-way line a distance of 171.87 feet to the PLACE OF BEGINNING and enclosing 1.924 acres of land.



## Exhibit D

TOWER ADDITION  
LOT 1, BLOCK 1  
CAB. M, P. 115

CALLED 2.542 AC. TR.  
 SHIRON INVESTMENTS, LLC  
 DOC. #2007-34590  
 R.P.R.O.Co.Tx.

1.924 ACRES

RONJON GROUP  
BUSINESS PARK  
LOT 1-R, BLOCK A  
CAR. Q. P. 350

20. GAS LINE ESMT.  
NDD GATHERING COMPANY  
DOC#2008-61046

60' UTIL GAS CO.  
LONE STAR P. 172 &  
" 410. reg

CALLED 84.8193 AC. TR.  
 CITY OF DENTON  
 V. 2431, P. 843  
 R.P.R.D.Co.Tx.

CALLED 4.62 AC. TR.  
 DENMISS, LLC  
 TO  
 CITY OF DENTON  
 DOC. #2013-84330  
 R.P.R.D.Co.Lx.

**Coleman & Assoc.  
Land Surveying**

P. O. BOX 686 • DENTON, TEXAS 76202  
PH(940)565-8215, FAX (940)565-9800,  
WWW.COLEMANSURVEYING.COM  
© 2011 COLEMAN & ASSOC. LAND SURVEYING

SCALE: 1"=50'  
DATE: 09-05-13

SEE ACCOMPANYING METES &  
BOUNDS DESCRIPTION

1.924 ACRES  
RONJON LEASE EXHIBIT  
CITY OF DENTON LANDFILL

PAGE 2 OF 2

SCALE: 1"=50'  
DATE: 09-05-13

ON  
NEW  
G  
E

SUBJECT PARCEL  
ADJOINING PROP. LINE  
EASEMENT LINE  
GAS PIPELINE

ON  
NEW  
G  
E

SUBJECT PARCEL  
ADJOINING PROP. LINE  
EASEMENT LINE  
GAS PIPELINE

SEE ACCOMPANYING METES &  
BOUNDS DESCRIPTION

1.924 ACRES  
RONJON LEASE EXHIBIT  
CITY OF DENTON LANDFILL

PAGE 2 OF 2

SCALE: 1"=50'  
DATE: 09-05-13