

INTERGOVERNMENTAL AGREEMENT
Composting Program Between Arizona Board of Regents for and on behalf of Northern
Arizona University and the City of Flagstaff

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2019, by and between the CITY OF FLAGSTAFF, a municipal corporation of the State of Arizona (“City”), and the ARIZONA BOARD OF REGENTS, a body corporate with perpetual succession pursuant to the laws of the State of Arizona, for and on behalf of Northern Arizona University, a public institution of higher education (“University”).

RECITALS:

WHEREAS, the City has authority to enter into this Agreement pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 11-952 and 41-2632 and the Flagstaff City Charter, Article I, Section 3; and

WHEREAS, the University has authority to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 15-1625 and Arizona Board of Regents Policy 3-808; and

WHEREAS, the City is exploring opportunities to process organic material produced within City limits with the intent of reducing the amount of material delivered to the landfill and reduce greenhouse gas emissions; and

WHEREAS, University has an existing composting operation that processes University’s organic waste produced from its grounds operations and dining halls; and

WHEREAS, the parties intend to explore whether it is within each party’s interest to expand the composting operation to accept material produced by the surrounding Flagstaff community.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties agree as follows:

The purpose of this Agreement is to cover the activities related to a pilot composting program between the parties that will allow organic material produced within the City limits to be collected and delivered for processing at the University’s processing facility. During the pilot composting program period, information will be gathered by the parties to determine the feasibility of continuing the composting program.

TERM AND TERMINATION:

This Agreement will begin upon full execution and continue for one (1) year (“Initial Term”). At the end of the Initial Term, the parties will determine if an extended period of time is needed to gather information regarding the composting program, and may enter into an amendment to renew the Agreement for one (1) additional year (“Renewal Term”). The Initial Term and

Renewal Term, if exercised, will cover the duration of the pilot composting program period. At the end of the pilot composting program period, the parties will determine whether or not to enter into an agreement for a long term composting program which will establish the specific responsibilities, costs and payment obligations between the parties.

Notwithstanding the foregoing, either party may terminate this Agreement for convenience by providing the other party ninety (90) days' prior written notice.

RESPONSIBILITIES:

City shall be responsible for the following activities:

1. Deliver to the University composting facility grass clippings and other organic material as agreed upon in monthly meetings between the parties. Such organic material shall be collected from property managed by the City's Parks and Recreation department.
2. Deliver to the University composting facility samples of other mutually agreed upon materials for processing as part of the pilot composting program under this Agreement.
3. Deliver to the University composting facility no more material than the mutually agreed upon capacity.
4. Deliver to the University composting facility the above referenced materials at mutually agreed upon times and dates.
5. Track tonnage and volume data on all materials delivered to University's composting facility.
6. Track operational costs incurred during the collection and delivery of material to the University's composting facility.

University shall be responsible for the following activities:

1. Process the mutually agreed upon organic material delivered by the City to the University's composting facility.
2. Operate and maintain its compost facility in accordance with University policies and applicable local, state and federal laws.
3. Management of the material distribution and disposal of any residual material delivered by the City to the University's composting facility.
4. Track operational costs associated with the pilot composting program. Such operational costs will include but are not limited to labor and machinery wear and tear.

PERSONNEL:

City personnel will not for any purpose be considered employees or agents of the University. The City assumes full responsibility for the actions of its personnel while performing activities and

services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including but not limited to withholding of income taxes and social security), workers' compensation and disability benefits.

INSURANCE AND INDEMNIFICATION:

1. University shall maintain adequate insurance (through the Arizona Department of Administration Risk Management Division, which is a self-insurance program) to cover any liability arising from the acts and omissions of NAU employees or agents participating in the pilot composting program. University shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of City employees or agents.
2. City shall maintain adequate insurance (which may include a bona fide self-insurance program) to cover any liability arising from the acts and omissions of City employees or agents participating in the pilot composting program. City shall not be responsible for maintaining insurance coverage for liability arising from the acts and omissions of University employees or agents.
3. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, indemnitor's officer, officials, agents, employees, or volunteers.

NONAPPROPRIATION:

If the City's performance under this Agreement depends upon the appropriation of funds by the City Council or the University's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the City Council or the Arizona Legislature, respectively, fails to appropriate the funds necessary for performance, then either the City or the University may provide written notice to the other party and immediately cancel this Agreement without further obligation of either party. Appropriation is a legislative act and is beyond the control of the parties.

RECORD INSPECTION AND RETENTION:

The parties agree to retain all books, accounts, reports, files and other records relating to the Agreement and to make such records available at all reasonable times for inspection and audit by

the University or Auditor General of the State of Arizona, or their agents, during the term of and for a period of five (5) years after completion of this Agreement.

CONFLICT OF INTEREST:

In accordance with A.R.S. § 38-511, this Agreement may be cancelled for conflict of interest within three (3) years after its execution, without penalty or further liability.

NON-DISCRIMINATION:

The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, non-discrimination, including the Americans with Disabilities Act, sexual orientation, or gender identity or expression.

THIRD PARTY BENEFICIARIES:

This Agreement is intended for the exclusive benefit of the parties hereto. Nothing herein is intended to create any rights or responsibilities to third parties.

ASSIGNMENT:

Neither party shall have the right to assign this Agreement without prior written consent of the other party.

MANNER OF FINANCING:

Each party to this Agreement shall be responsible for its own costs and budgeting for performance of their respective obligations.

DISPUTES AND ARBITRATION:

In the event of a dispute between the parties to this Agreement, the parties shall attempt to resolve the disagreement on an informal, good faith basis. If that fails, pursuant to A.R.S. §12-1518, the parties acknowledge and agree that they may be required to make use of mandatory arbitration of any legal action that is filed in the Arizona Superior Court concerning a controversy arising out of this Agreement if required by A.R.S. § 12-133.

RELATIONSHIP AND USE OF MARKS:

Except as otherwise agreed in writing, the parties acknowledge that the relationship created by this Agreement is limited to a pilot composting program. Neither party shall make any representations stating or implying the parties engage in broader transactions or that a party is otherwise associated with the other without first obtaining express written permission from the other party. In addition, neither party shall use any trade name, trademark, service mark, logo, domain name, nor any other distinctive brand feature owned or used by the other party without its express written authorization.

NOTICES:

To City:
Dylan Lenzen
City of Flagstaff Sustainability Section
211 W Aspen Ave
Flagstaff, AZ 86001

To University:
Matthew Muchna
Office of Sustainability
PO Box 6016
Flagstaff, AZ 86011

with copy to:
Patrick Brown
City of Flagstaff Purchasing Section
211 W Aspen Ave
Flagstaff, AZ 86001

with copy to:
Contracts Unit of
Contracts, Purchasing & Risk Management
PO Box 4124
Flagstaff, AZ 86011

GENERAL PROVISIONS:

1. Both parties agree to meet monthly during the term of this Agreement to discuss the quantity and quality of the material being delivered to the University composting facility, as well as the costs incurred by both parties under the pilot composting program.
2. No payments will be exchanged between the parties during the term of this Agreement. If the determination is made to enter into a long term composting program at the conclusion of the pilot composting program period, any costs associated with the long term composting program will be identified in a subsequent agreement between the parties.

COUNTERPARTS:

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

AMENDMENTS AND RELATED AGREEMENTS:

This Agreement constitutes the entire agreement of the parties relating to the subject matter hereof as of the date of execution. All amendments or modifications of this Agreement shall be in writing and approved by the parties.

IN WITNESS WHEREOF, the parties hereto have set forth their hands, through representatives duly so authorized, the day and date first above written.

**ARIZONA BOARD OF REGENTS FOR AND ON BEHALF OF
NORTHERN ARIZONA UNIVERSITY**

Rita Hartung Cheng, President

Approved as to form:

Michelle G. Parker, General Counsel

CITY OF FLAGSTAFF

Coral Evans, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney