

# CITY CLERK ORIGINAL

C-7944  
02/28/2012

## INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PEORIA AND THE CITY OF GLENDALE FOR LANDFILL DISPOSAL SERVICES

THIS INTERGOVERNMENTAL AGREEMENT FOR LANDFILL DISPOSAL SERVICES ("Agreement") is made and entered into on February 28, 2012, between the City of Peoria, an Arizona municipal corporation ("Peoria") and the City of Glendale, an Arizona municipal corporation ("Glendale"). Peoria and Glendale are referred to herein collectively as the "Parties" or individually as a "Party."

### RECITALS

A. Peoria and Glendale intend to enter into this Agreement for Landfill Disposal Services. Peoria and Glendale are authorized and empowered by provisions of their respective city charters and Arizona Revised Statutes § 11-952 to enter into this Agreement.

B. Peoria and Glendale find it mutually beneficial for Glendale to provide landfill disposal services to Peoria.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Peoria and Glendale hereby agree as follows:

#### 1. Definitions.

The capitalized terms contained in this Agreement and not otherwise defined shall have the meanings set forth below:

**"Acceptable Waste"** means household solid waste collected by the Parties in their respective service areas for disposal in the Landfill that is normally generated by business, industrial, and commercial establishments, which consists of (i) household wastes; (ii) commercial waste (originating from entities such as restaurants, stores, markets, theaters, hotels, and warehouses); (iii) institutional waste material originating in schools, hospitals, research institutions, and public buildings; (iv) small amounts of remodeling, demolition, roofing materials and other construction debris; (v) water treatment plant or wastewater sludge, capable of passing the mandated paint filter test, and delivered with an acceptable lab report (sample analysis according to appropriate waste testing protocol established by the Facility, as defined below); and (vi) friable and non-friable asbestos containing waste material. Acceptable Waste does not include any Hazardous Waste, Special Waste, Medical Waste, including "red bags," or Unacceptable Waste, as defined herein, or any other waste not normally accepted at the Facility, as such term is defined below.

**"Applicable Laws, Rules, and Regulations"** means the laws, statutes, regulations and rules enacted by the federal government or any agency thereof, the state or any political subdivision thereof, affecting the permitting, operation or use of the Facility (as defined below), as such laws, statutes, regulations and rules are now in effect or as adopted subsequently.

**"Contract Year"** means one fiscal year period of July 1 through June 30.

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**"Dollars"** means United States dollars.

**"Facility"** means the Glendale Municipal Landfill located at 11480 West Glendale Avenue, Glendale, Arizona.

**"Fiscal Year"** means the City of Glendale's calendar for a fiscal year, currently July 1 through June 30.

**"Force Majeure"** means any act, event, or condition having a direct, material, adverse effect on the ability of the Facility to accept or dispose of Acceptable Waste, if such act, event, or condition is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement. Such acts, events, or conditions shall include, but shall not be limited to, the following:

- A. An act of God, lightning, earthquake, fire, severe weather conditions, epidemic, landslide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot, disturbance, labor strike or interruption, extortion, sabotage or similar occurrence or any exercise of the power of eminent domain, condemnation or other taking by the action of any governmental body on behalf of any public, quasi-public or private entity.
- B. The order, judgment, action, or determination of any court, administrative agency, or governmental body: (1) that adversely affects the (a) operation of the Facility, (b) the right or ability for the Facility to accept Acceptable Waste by road or (c) the right or ability of the Facility to dispose of the Acceptable Waste; or (2) resulting in the suspension, termination, interruption, denial or failure of renewal of issuance of any permit, license, consent, authorization, or approval necessary to the operation of the Facility, or acceptance, processing, transportation, or disposal of Acceptable Waste; unless, it is shown that such order or judgment is the result of the grossly negligent, willful, or intentional action or inaction of the Party relying thereon or is the result of grossly negligent or willful violation of Applicable Laws, Rules and Regulations, as replaced or amended, and provided further that the contesting in good faith of any such order or judgment shall not constitute or be construed as a grossly negligent, willful or intentional action or inaction of such Party.
- C. The denial of an application, failure to issue, or suspension, termination, or interruption in the issuance or renewal of any permit if such denial, suspension, termination, interruption, or failure is not also the result of a wrongful or negligent act or omission or a lack of reasonable diligence of the Party relying thereon; provided that, the contesting in good faith or the failure in good faith to contest any such denial, suspension, termination, interruption, imposition or failure shall not constitute or be construed as such a wrongful or negligent act or omission or lack of reasonable diligence.
- D. The failure of any subcontractor or supplier to furnish services, materials or equipment on the dates agreed to if such failure is caused by a Force Majeure, if and to the extent, and only so long as Glendale is not reasonably able, after using its best efforts, to obtain substitute services, materials or equipment.

**"Gate Rate"** means the tipping fee for Acceptable Waste charged to a non-contract vehicle using the Landfill. The Gate Rate shall include any applicable taxes, fees, or levies, as replaced or amended, that the Landfill is required to pay for waste delivered to and accepted at the Landfill.

**"Hard to Handle Waste"** means waste requiring special handling such as the burial in an area away from the main working face of the Landfill, the breaking up of large materials as mobile homes or pieces of concrete, spools of wire and Hot Loads (as defined below).

**"Hazardous Waste"** means (A) any material or substance which, by reason of its composition or characteristics, is (1) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. Section 6901 *et seq.*, as replaced or amended, or any laws of similar purpose or effect, and such policies or regulations thereunder, or under relevant state law as replaced or amended, or any laws of similar purpose or effect, and any rules, regulation, or policies thereunder, or (2) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954; (B) other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for transfer through, transportation by, or disposal from or to the Facilities; and (C) any material which would result in process residue being hazardous waste under (A) and (B) above.

**"Hot Load"** means any load of materials delivered to the Facility that is emitting smoke, fire or fumes, or may be in imminent danger of fire or explosion.

**"Medical Waste"** means any material or substance that, by reason of its composition or characteristics, is medical waste as defined by the Arizona Department of Environmental Quality.

**"Special Waste"** means any waste that is defined as a Special Waste under or pursuant to Arizona Revised Statutes § 49-851 *et seq.*, federal, or local laws or regulations, as replaced or amended.

**"Tipping Fee"** shall mean the total rate charged and adjusted by Glendale for disposal by Peoria at the Facility, as more fully set forth in Section 3.3 of this Agreement. The Tipping Fee shall include any applicable taxes, fees, or levies, as replaced or amended, that the Facility is required to pay for waste delivered to and accepted by the Facility.

**"Ton"** means two thousand (2,000) U.S. pounds.

**"Unacceptable Waste"** means that portion of solid waste that may not be disposed of at the Facility, such as, but not limited to: (A) explosives, radioactive materials, medical waste or infectious waste, tires (excluding tires delivered by Peoria residents as per Section 2.1 b), residential cesspool waste, sewage, and sludge; (B) motor vehicles, including major motor vehicle parts, and agricultural and farm machinery and equipment; (C) used oil; (D) materials that, in the reasonable judgment of Peoria and Glendale may present a risk to health or to safety, or has a reasonable possibility of adversely affecting the operation of the Facility such as Hot Loads; or (E) waste not authorized for disposal at any Facility by those entities having jurisdiction over any waste, the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste also includes any waste that is now or hereafter defined by federal/state law or by the disposal jurisdiction as radioactive waste, Medical Waste including "red bags," Special Waste, or Hazardous Waste.

## 2. Delivery of Acceptable Waste.

### 2.1 Acceptable Waste Delivered.

- A. Peoria shall use its reasonable best efforts to ensure that all materials delivered to the Facility shall constitute only Acceptable Waste. Glendale shall have the right to refuse to accept Unacceptable Waste at the Facility. Peoria will be charged the fees established in Section 3.3 below.

- B. Peoria residents will be charged the established rate in section 3.3 below for Acceptable Waste delivered in self-hauled loads to the Facility for disposal. All appliances containing Freon will be assessed a separate fee to cover the cost the Facility incurs for Freon removal. The fee is subject to change at any time to reflect the market cost of Freon removal.
- C. Waste tires delivered by Peoria residents will be accepted and assessed a waste tire handling fee of \$3.00 per tire in addition to the Tipping Fee. The tires must be from passenger vehicles or small non-commercial trucks, and shall not contain rims. Off-road vehicle tires will not be accepted. Peoria residents will be limited to the delivery of five waste tires every 90 calendar days. This waste tire handling fee is subject to change at any time to reflect the Facility cost of handling.
- D. Peoria and Glendale recognize that even though certain solid waste would constitute Acceptable Waste, it can be of such a quantity or character as to require special handling for disposal (Hard to Handle Waste). In the event Glendale identifies Acceptable Waste as Hard to Handle Waste, it shall notify Peoria of any additional charges related to disposal of same prior to disposal.
- E. Peoria and Glendale recognize that although waste tires with or without rims constitute Unacceptable Waste, they may on occasion be mixed with Acceptable Waste without Peoria's knowledge or intent. In such event, waste tires will be handled by the Facility. However, should the receipt of such unacceptable waste tires become an unreasonable burden on the Facility, both parties agree to make a reasonable effort to resolve the problem. Waste tires delivered by Peoria residents, as discussed above, are not included as Unacceptable Waste.

## 2.2 Weighing of Acceptable Waste.

- A. Each vehicle delivering Acceptable Waste shall have a vehicle identification number permanently indicated and conspicuously displayed on the exterior of the vehicle, which is readily visible by the weigh scale operators. Peoria shall provide a certified tare weight for each such identified vehicle. All incoming Acceptable Waste shall be weighed and recorded. From time to time, the Parties may require revalidation of the tare weight of any vehicle or re-weighing of unloaded trucks. Peoria, at no extra cost, shall have the right to monitor the weighing of all vehicles delivering Acceptable Waste to the Facility.
- B. Glendale shall maintain the weighing devices at the Facility for the purpose of providing its services hereunder. Glendale shall test and recalibrate the scales at least once each quarter, or more often if necessary or if required by the Arizona Department of Weights and Measures. Calibration records shall be available for inspection by Peoria.
- C. In the event the scales become temporarily inoperable due to testing or malfunction, Glendale shall estimate the weight of Acceptable Waste delivered to the Facility on the basis of truck volume and historical data obtained through operation of the Facility. These estimates shall serve as official records for the duration of the scale outage. Glendale shall use its best efforts to ensure that no such period of inoperability exists for more than five consecutive days, and in the aggregate not more than 15 days in any 30-day period.

D. To expedite turnaround time at Facility, Peoria will use the automated, unattended scale system (commonly referred to as the Radio Frequency or RF Scale). Glendale will provide Peoria with a summary of all transactions on a monthly basis as specified in Section 3.1. Information on specific transactions or a daily report will be generated upon request.

**2.3 Vehicle Turnaround Time.** Each and every vehicle delivering Acceptable Waste to the Facility shall be able to enter the Facility, unload and exit the Facility within a period of not longer than 20 minutes, with the understanding that bad weather conditions, such as heavy rain, may cause delays beyond the control of the Facility. The average period of not longer than 20 minutes is based on the use of the unattended scale system and an average period of not longer than 8 minutes to unload the Peoria vehicles. Glendale shall provide experienced staff at the Facility to direct incoming drivers.

**2.4 Delivery Vehicles.** Acceptable Waste may be delivered to the Facility in a variety of vehicles including, but not limited to, side-loading collection trucks, rear-loading collection trucks, front-loading collection trucks, tractor-trailer vehicles, open top and closed roll-off containers, compactors, and other open or closed vehicles. The Facility shall be equipped to receive all vehicles that are lawfully used to transport Acceptable Waste.

**2.5 Hot Loads.** In the event that a Peoria vehicle dumps a Hot Load, Peoria agrees to pay the reasonable costs incurred by Glendale for the handling of that Hot Load, including costs related to response by public safety personnel as well as cleanup and disposal costs related to the material.

**2.6 Procedure for Handling Unacceptable Waste.** Unacceptable Waste detected before it is tipped at the Facility disposal area shall not be unloaded from the delivery vehicle. If Unacceptable Waste is detected after it has been unloaded, Glendale shall promptly set aside or isolate the material. Glendale will notify Peoria and provide Peoria with an opportunity to either remove the Unacceptable Waste within eight (8) working hours (provided the waste material does not pose an immediate danger) or instruct Glendale to contract for the removal of the material and invoice Peoria for the removal cost.

### **3. Statements, Records, and Auditing.**

#### **3.1 Monthly Reports, Weight Tickets, and Monthly Reconciliation.**

A. Glendale shall deliver to Peoria within ten working days after the end of the month, an electronic monthly report that shall specify the number of tons of waste received during the previous month. The report will provide a summary of the previous month's weight tickets for all waste received each day at the Facility, including transaction number, truck number, date, time, material type, net tons and total fee. Because the unattended scale system will be used by Peoria vehicles, weight tickets will be provided to drivers only upon request.

B. Any weight that has been determined by estimate as described in Section 2.2(C) above shall be noted on all records of such weight.

C. Peoria shall review each monthly report and/or billing statement and pay the fee required for tonnage delivered to the Facility during that month. Peoria will further pay for any additional tonnage based on the established rate in Section 3.3 below. Payment shall be received or remitted in accordance with Glendale remittance

terms, which currently is prior to the last business day of the month. These remittance terms may change to align with any change in business practices. Glendale must notify Peoria in writing regarding any changes to the remittance terms, and any changes will not take effect until at least 90 days after the notice is provided in a manner consistent with Section 13.11 of this Agreement.

**3.2 Recordkeeping, Accounting and Auditing.**

- A. Glendale shall keep and maintain complete and detailed records related to the delivery of Acceptable Waste and Unacceptable Waste and records providing the basis for the invoicing requirements under this Section including (1) tonnage of Acceptable Waste delivered by Peoria to the Facility and (2) quantities of Unacceptable Waste and the disposition of such material including the character of the waste, the date, time, and vehicle identification of each vehicle. Glendale shall further keep and maintain accurate and complete accounting records and vouchers evidencing all costs, receipts, payments and any other matter of accounting associated with their performance under this Agreement in accordance with generally accepted accounting principles.
- B. Peoria, or its audit representative, shall have the right at any reasonable time to inspect, copy and audit the records, accounting records, vouchers, and any source documents which serve as the basis for charges for Acceptable Waste tonnage (the "Accounting Records"). The Accounting Records shall be available for inspection and audit for a period of three years following the termination of this Agreement, or seven years from the date such Accounting Records were first created, whichever comes first.

**3.3 Tipping Fees.**

- A. The Tipping Fee for disposal services of 1-29,999 Tons of waste at the Facility shall be as follows:

Tipping Fee 1-29,999 Tons	Effective Date(s)
25.00	January 1, 2012 through June 30, 2012
26.50	July 1, 2012 through June 30, 2013
28.00	July 1, 2013 through June 30, 2014

This Tipping Fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

- B. The Tipping Fee for disposal services of 30,000-49,999 Tons of waste at the Facility shall be as follows:

Tipping Fee 30,000-49,999 Tons	Effective Date(s)
21.50	January 1, 2012 through June 30, 2012
23.00	July 1, 2012 through June 30, 2013
24.50	July 1, 2013 through June 30, 2014

This Tipping Fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

- C. Tonnage will be tracked as trucks pass through the scale and charged the appropriate Tipping Fee per tonnage category up to 29,999 tons as outlined in Section 3.3.A. above. Once Peoria delivers 30,000 tons or more of waste during a Contract Year, Glendale will administratively issue a credit for the tonnage below 30,000 tons. Moving forward for any tonnage over 29,999 tons during a Contract Year, the appropriate tipping fee per tonnage category of 30,000 to 49,999 tons as outlined in Section 3.3.B. above will be charged.
- D. As provided in Section 4.1 of this Agreement, the Tipping Fee shall be reviewed prior to extension of the term of this Agreement as set forth in Section 4.1 below. The Tipping Fee review will be conducted no later than six month prior to the termination of this Agreement, with Tipping Fee adjustments completed and effective on the first date of the renewal date.
- E. The Tipping Fee may be adjusted at any time to reflect any adjustments of, changes to, or additions to Federal, State, or County taxes, fees, or levies for waste accepted at the Facility.
- F. Water treatment plant or wastewater sludge, capable of passing the mandated paint filter test, and delivered with an acceptable lab report (sample analysis according to appropriate waste testing protocol established by the Facility), shall be deposited at the Tipping Fee established for Peoria per this Agreement. The sample analysis shall be conducted every six months.
- G. All appliances containing Freon and delivered by Peoria collection vehicles will be assessed a separate fee, in addition to the Tipping Fee, to cover the cost the Facility incurs for Freon removal. This fee is subject to change at any time to reflect the market cost of Freon removal.
- H. A Hard to Handle Waste fee of \$131.25 per ton will be charged for Hard to Handle Waste as defined in Section 1. This fee includes the current \$0.25 per ton Arizona Department of Environmental Quality tax.

#### 4. Term and Termination.

4.1 **Term of Agreement.** The term of this Agreement shall begin on the effective date of January 1, 2012, and shall continue thereafter until June 30, 2014. This Agreement may be extended on terms and conditions acceptable to both Glendale and Peoria for two additional periods of three years each, unless terminated pursuant to Section 4.2 below.

#### 4.2 Termination.

- A. Notwithstanding the provisions of Section 4.1 above, Peoria may terminate this Agreement without cause at the end of any Contract Year upon prior written notice to Glendale. Such written notice must be received no later than April 1 of the then-current Contract Year and termination will be effective midnight on June 30 of the then-current Contract Year.
- B. Glendale may terminate this Agreement, at any time, with 180 calendar days written notice to Peoria. There shall be no payment associated with the termination of this Agreement by Glendale.

- C. This Agreement is subject to the provisions of Arizona Revised Statutes § 38-511, as replaced or amended, and may be canceled, without penalty or further obligation, by either Party if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of either Party is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other Party to this Agreement in any capacity or consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

**5. General Obligations.**

- 5.1 Operation and Maintenance of the Facility.** Glendale shall operate and maintain the Facility in a manner that is consistent with its obligations under this Agreement and is consistent with all Applicable Laws, Rules, and Regulations, as replaced or amended.
- 5.2 Laws and Regulations.** Glendale shall, in the operation of the Facility and the performance of its obligations under this Agreement, comply with any and all Applicable Laws, Rules, and Regulations, as replaced or amended, during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.

**6. Facility Operations.**

- 6.1 Hours and Days of Operation.** The Facility must be operational to receive Acceptable Waste from 7:30 a.m. to 4:00 p.m., Monday through Friday, and on Saturday from 7:00 a.m. to 3:00 p.m., excluding City of Glendale holidays. Alternative holiday schedules may be established by mutual agreement of the Parties.
- 6.2 Right to Inspect.** Peoria shall have the right to enter and inspect the Facility to observe operations during operating hours as long as: (A) such visits are conducted in a manner that does not cause unreasonable interference with operations; and (B) any person conducting such visits (1) complies with safety rules and regulations and (2) is escorted by a designated Facility employee.

**7. Unacceptable Waste.**

- 7.1 Discovery of Unacceptable Waste.** If Glendale discovers Unacceptable Waste or waste that it suspects is Unacceptable Waste received from Peoria, Glendale shall:
- A. Isolate, remove and set aside that portion of the load which it determines is or may be Unacceptable Waste.
  - B. Notify Peoria of the discovery of Unacceptable Waste within one hour of that discovery, unless that discovery occurs after 4:00 p.m., in which event notification shall be given by 9:00 a.m. of the next business day.
  - C. Gather, preserve, maintain and make available to Peoria all evidence demonstrating that the Unacceptable Waste was delivered by Peoria.
  - D. Test or arrange to have tested the suspected Unacceptable Waste to ascertain whether that waste is Unacceptable Waste.

E. Allow Peoria to (1) inspect such Unacceptable Waste within eight hours of notice to Peoria of the existence of such waste and (2) test the waste and examine all other evidence gathered by Glendale within 72 hours after the discovery of such waste. For purposes of any inspection conducted, Peoria shall have access to the Facility and/or any other site at which Unacceptable Waste is located, subject to the conditions set forth in Section 6.2 above.

**7.2 Rejection of Unacceptable Waste.** Glendale shall have the right to reject Unacceptable Waste after the load is unloaded at the Facility by giving notice to Peoria as set forth in Subsection 7.1(B) above. Unacceptable Waste shall be deemed accepted if not rejected.

**7.3 Disposal of Unacceptable Waste.** If Unacceptable Waste is discovered at the Facility and there is substantial proof that the Unacceptable Waste was delivered to the Facility by Peoria under this Agreement, Peoria shall (A) to the extent practicable, promptly remove and dispose of the Unacceptable Waste or (B) pay Glendale the actual reasonable cost for disposal of the Unacceptable Waste. Peoria shall also pay or reimburse Glendale for the actual reasonable cost of the inspection, testing, identifying and handling of the Unacceptable Waste.

**7.4 Disposal of waste not deemed Unacceptable.** If, after inspecting and/or testing the waste, Glendale discovers no Unacceptable Waste, or discovers that the Unacceptable Waste was not delivered to the Facility by Peoria, Glendale shall dispose of that waste at no additional cost to Peoria.

**8. Representations and Warranties.**

Glendale hereby represents and warrants to Peoria that:

- A. Glendale has the full power and authority to execute and deliver this Agreement to Peoria and carry out the transactions contemplated hereby.
- B. Glendale has taken all necessary action to execute, deliver and perform this Agreement.
- C. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein or Glendale's compliance with any of the terms and provisions of this Agreement do not or will not contravene any existing law, judgment, governmental rule, regulation or order applicable to or binding on it or any of its properties which, if violated, would have a material adverse effect on Glendale's obligations under this Agreement.
- D. The Facility is and will remain appropriately permitted or licensed to accept the Acceptable Waste and otherwise perform as required by this Agreement.
- E. Upon execution and delivery of this Agreement by Glendale, it will constitute a legal, valid and binding obligation of Glendale enforceable against it in accordance with the terms hereof.

**9. Indemnification.**

Each Party (as "indemnitor") agrees, to the extent permitted by law, to indemnify, defend, and hold harmless the other Party and its officers, employees, and elected or appointed officials (as

"indemnitee") from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees (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 are caused by the negligence, misconduct, intentional act or other fault of the indemnitor, its officers, employees, contractors, elected or appointed officials. Glendale further agrees to indemnify, defend and hold harmless Peoria and its officers, employees and elected or appointed officials for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees arising out of Glendale's failure to comply with all Applicable Laws, Rules, and Regulations.

**10. Obligations during Force Majeure.**

- 10.1 Notice Relating to Force Majeure.** If any act or event of Force Majeure occurs which affects either Party's ability to perform under this Agreement, the Party affected and relying thereon to excuse its performance hereunder shall give oral notice to the other as soon as reasonably practicable, and shall deliver to the other Party within 48 hours after such oral notice, written notice setting forth such information as may be available to it with respect to the nature, extent, effect, and anticipated duration of the act or event of Force Majeure.
- 10.2 Obligation of the Parties during an Event of Force Majeure.** If such an act or event of Force Majeure occurs which has the effect of reducing the amount of Acceptable Waste that a Party can accept from or deliver to the other, both Parties shall be excused from performance during the existence of the Force Majeure upon written notice to the other Party claiming Force Majeure. A Force Majeure for which said notice has not been given shall be an unexcused delay. The effects of said Force Majeure shall be remedied with all reasonable dispatch, and said Party giving notice shall use best efforts to eliminate and mitigate the consequences thereof.

**11. Immigration Law Compliance.**

- 11.1** Each Party, and on behalf of any subcontracted party, warrants, to the extent applicable under Arizona Revised Statutes § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with Arizona Revised Statutes § 23-214(A) which requires registration and participation with the E-Verify Program.
- 11.2** Any breach of warranty under Section 11.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 11.3** Each Party retains the legal right to inspect the papers of any contracted party's or subcontracted party's employee who performs work under this Agreement to ensure each Party is compliant with the warranty under Section 11.1 above.
- 11.4** Each Party may conduct random inspections, and upon request or notice to other Party, either Party shall provide copies of papers and records demonstrating continued compliance with the warranty under Section 11.1 above. Each Party agrees to keep papers and records available for inspection during normal business hours and will cooperate in exercise of each Party's statutory duties and not deny access to business premises or applicable papers or records for the purposes of enforcement of this Section 11.
- 11.5** Each Party agrees to incorporate into any subcontracts under this Agreement the same statutorily required obligations and expressly accrue those obligations directly to the benefit of either Party. Each Party also agrees to require any subcontracted party to incorporate into

each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the either Party.

- 11.6 The warranty and obligations under this section for each Party are continuing throughout the term of this Agreement or until such time as either Party determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 11.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

12. **Foreign Prohibitions.** Each Party certifies, to the extent applicable under Arizona Revised Statutes §§ 35-391 *et seq.* and 35-393 *et seq.*, that neither has "scrutinized" business operations (as defined in the preceding statutes) in Sudan or Iran.

13. **General Provisions.**

- 13.1 **Non-Assignment.** Neither Party shall assign, transfer, convey, subcontract, pledge or otherwise hypothecate this Agreement or its rights, duties or obligations hereunder or any part thereof without prior written consent of the other Party, which may be withheld in its reasonable discretion. Any assignment made in violation of this Section shall be void and of no force or effect and shall constitute a material breach of the Agreement.
- 13.2 **Headings.** All sections and descriptive headings of sections and subsections in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.
- 13.3 **Severability; Integration.** Inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement constitutes and embodies the full and complete understanding and agreement of the Parties hereto and supersedes all prior understandings, agreements, discussions, proposals, bids, negotiations, communications, and correspondence, whether oral or written. No representation, promise, inducement or statement of intention has been made by any Party hereto which is not embodied in this Agreement, and no Party hereto shall be bound by or liable for any alleged misrepresentation, promise inducement or statement of intention not so set forth.
- 13.4 **Indulgences Not Waivers.** Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. Payments by the respective Parties shall not constitute a waiver of contract rights.
- 13.5 **Construction.** This Agreement is intended to express the mutual intent of the Parties and, irrespective of the identity of the Party preparing this Agreement or any document or instrument referred to herein, no rule of strict construction against the Party preparing a document shall be applied.

- 13.6 No Other Parties To Benefit.** This Agreement is made for the sole benefit of the Parties hereto and their successors and assigns. Except as may be expressly provided herein, no other person or entity is intended to or shall have any rights of benefits hereunder, whether as third-party beneficiaries or otherwise.
- 13.7 Inurement.** This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.
- 13.8 Governing Law; Forum; Venue.** This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) shall govern their interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the State or federal courts of the State of Arizona and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.
- 13.9 Modification and Waiver.** No provision of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the Parties hereto.
- 13.10 Laws and Regulations.** The Parties shall, in the operation of the Facility and the performance of their obligations under this Agreement, comply with any and all federal, state, and local laws and regulations now in effect, or hereafter enacted during the term of this Agreement, which are applicable to the Parties, their respective employees, agents, or subcontractors, if any.
- 13.11 Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below, or (D) delivered by email transmission to the number set forth below:

To Peoria:                      City of Peoria  
    Public Works Department  
    9875 N. 85<sup>th</sup> Avenue  
    Peoria, Arizona 85323  
    ATTN: William Mattingly, Public Works-utilities Director  
    Email: William.mattingly@peoriaaz.gov

With a copy to:                City of Peoria  
    City Attorney's Office  
    9875 N. 85<sup>th</sup> Avenue  
    Peoria, Arizona 85323  
    ATTN: Steve Kemp, City Attorney  
    Email: steve.kemp@peoriaaz.gov

To Glendale:                    City of Glendale  
    Field Operations Department  
    6210 W. Myrtle Avenue, Suite 111  
    Glendale, Arizona 85301  
    ATTN: Stuart Kent  
    Email: SKent@glendaleaz.com

With a Copy to: City of Glendale  
City Attorney  
5850 W. Glendale Avenue, Suite 450  
Glendale, Arizona 85301  
Email: CTindall@glendaleaz.com

or such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (C) the following business days after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by email during the normal business hours of the recipient. If a copy of a notice is also five to a party's counselor other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counselor other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 13.12 Contact Person.** Upon execution of this Agreement, each Party shall provide and maintain with the other the following:
- A. The name and address to whom financial or accounting statements should be sent or of whom inquiries should be made.
  - B. The name and address of the person or persons to be contacted for day-to-day matters except for the matters listed above.
- 13.13 Non-Exclusive Agreement.** The Parties acknowledge that this is a non-exclusive Agreement and that Peoria and Glendale may contract with others to provide for services similar to those in this Agreement with respect to the Facility and the collection and delivery of Acceptable Waste.
- 13.14 Contractual Status.** Each Party is acting independent of the other Party under this Agreement and nothing herein is intended nor shall it be construed to create a joint venture or partnership between Peoria and Glendale, or to render either Peoria or Glendale liable for contractual or governmental obligations of the other including, without limitation, obligations to various agents and/or subcontractors, in any manner whatsoever, it being expressly agreed between the Parties that neither of them have any intention of assuming any contractual or other liability of the other by reason of the execution of this Agreement.
- 13.15 Remedies.** The Parties to this Agreement, in addition to the right of terminations provided pursuant to Section 4.2 of this Agreement, shall in the event of a material breach of any term of this Agreement have available all remedies provided by law or in equity for such breach, including expressly the right to an award of reasonable attorney's fees and court costs to the prevailing Party in connection with any dispute respecting any term of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

"PEORIA"

By: Bob Barrett  
Bob Barrett, Mayor

"GLENDALE"

By: Elaine M. Scruggs  
Elaine M. Scruggs, Mayor

ATTEST:

By: Wanda Nelson  
Wanda Nelson, City Clerk



ATTEST:

By: Pamela Hanna  
Pamela Hanna, City Clerk

The foregoing agreement between the City of Peoria and the City of Glendale has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned City Attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Peoria. No opinion is expressed as to the authority of any parties, other than the City of Peoria to enter into this Agreement.

Stephen M. Kemp

Stephen M. Kemp  
Peoria City Attorney

The foregoing agreement between the City of Peoria and the City of Glendale has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned City Attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Glendale. No opinion is expressed as to the authority of any parties, other than the City of Glendale to enter into this Agreement.

Craig Tindall

Craig Tindall  
Glendale City Attorney