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**RECIPROCAL SERVICES AGREEMENT
BETWEEN THE CITY OF PHOENIX AND THE CITY OF GLENDALE**

WHEN RECORDED RETURN TO:

Stephen Wetherell, Esq.
City of Phoenix
Office of City Attorney
200 West Washington Street, 13th Floor
Phoenix, Arizona 85003-1611

INTERGOVERNMENTAL AGREEMENT NO. 132974

This Reciprocal Services Intergovernmental Agreement (the "Agreement") is entered into pursuant to Arizona Revised Statutes ("A.R.S.") § 11-952 between the City of Phoenix, Public Works Department (hereinafter referred to as "PHOENIX") and the City of Glendale, an Arizona municipal corporation (hereinafter referred to as "GLENDALE"). PHOENIX and GLEDNALE are collectively referred to as "Parties", and individually as "Party".

RECITALS

A. PHOENIX has a municipal solid waste landfill known as the SR 85 Landfill located on Patterson Road west of State Route 85 (the "SR 85 Landfill"). The SR 85 Landfill is used for disposal of waste from PHOENIX facilities only. No waste will be directly hauled to SR 85 Landfill without prior approval from the City of Phoenix and the Town of Buckeye.

B. PHOENIX has two municipal solid waste transfer stations: the 27th Avenue Solid Waste Management Facility (the "27th Avenue Transfer Station") and the North Gateway Transfer Station (the "North Gateway Transfer Station"). Together, these two transfer stations are hereinafter collectively referred to as the "PHOENIX Facility".

C. GLENDALE has a municipal solid waste facility located at 11480 West Glendale Avenue (the "GLENDALE Landfill"). The GLENDALE Landfill, together with GLENDALE's transfer stations, are hereinafter collectively also referred to as the "GLENDALE Facility".

D. PHOENIX and GLENDALE collect or cause the collection of solid waste and the transportation of solid waste to their respective transfer stations and landfills for disposal. The PHOENIX Facility and GLENDALE Facility are hereinafter collectively referred to as "Facilities."

E. PHOENIX is empowered to enter into this Agreement pursuant to Chapter 2, Section 2(i) of the Phoenix City Code and is authorized to enter into this Agreement by appropriate action of its City Council.

F. GLENDALE is empowered to enter into this Agreement pursuant to Article VIII of the Glendale City Charter, and is authorized to enter into this Agreement by appropriate action of its City Council.

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G. PHOENIX and GLENDALE are empowered to enter into this Agreement pursuant to A.R.S. § 11-952.

H. PHOENIX and GLENDALE believe it would be advantageous for each of them to utilize the Facilities owned by the other from the standpoint of efficiency of collection and disposal, vehicle routing, avoidance of excessive travel times and distances, fuel economy efficiency, and reduction of pollution.

I. Accordingly, both PHOENIX and GLENDALE desire to facilitate use by the other of the Facilities owned by each of them all in accordance with the terms and conditions of this Agreement.

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

**ARTICLE 1
DEFINITIONS**

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

"Acceptable Waste" means solid waste collected by the Parties in their respective service areas for disposal in the Landfill that is normally generated by residential-dwelling units, 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.

"Agreement" means this Agreement between the City of Phoenix and the City of Glendale together with all appendices hereto and amendments, if any.

"Contractual Charge" means the higher of the Facilities fee at the end of the Fiscal Year.

"Dollars" means United States dollars.

"Effective Date" means the date on which this Agreement becomes effective, which shall be the first work day following the month in which this Agreement is signed by both Parties.

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"Fiscal Year" means the twelve (12) month period beginning July 1st and ending June 30th.

"Force Majeure" means any act, event, or condition having a direct material adverse effect on the ability of a Party's Facility to acceptor 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 which adversely affects the: (1) operation of the Facilities; (2) the right or ability of the Facilities to accept or transport Acceptable Waste by road; or (3) the right or ability of the Facilities to dispose of the Acceptable Waste, or 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 Party's Facilities, 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, 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 the affected Party is not reasonably able, after using its best efforts, to obtain substitute services, materials, or equipment.

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"Hazardous Waste" means: (1) any material or substance which by reason of its composition or characteristics is (a) toxic or hazardous waste as defined in either the Solid Waste Disposal Act, 42 U.S.C. §§ 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, regulations, or policies thereunder, or (b) special nuclear or by-products material within the meaning of the Atomic Energy Act of 1954; (2) 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 a Facility; and (3) any material which would result in process residue being Hazardous Waste under (1) or (2) above.

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

"Maximum Tonnage" means the total maximum tonnage level of 2,100 tons per month of Acceptable Waste during the term of this Agreement commencing with the Effective Date.

"Maximum Annual Tonnage" means the Maximum Tonnage times twelve (12).

"Parties" means the City of Phoenix and the City of Glendale.

"Special Waste" means any waste that is now or hereafter defined as a special waste under or pursuant to A.R.S. §§ 49-851 et seq. or any other waste that requires special handling under federal, state, or local laws or regulations.

"Ton" means a short ton of 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; (B) residential cesspool waste, sewage, and sludge; (C) motor vehicles, including major motor vehicle parts, and agricultural and farm machinery and equipment; (D) waste tires; (E) used oil; (F) materials that, in the reasonable judgment of the Parties 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 (G) 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.

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**ARTICLE 2
DELIVERY OF ACCEPTABLE WASTE**

2.1 Delivery and Tonnage Exchange

- a. From and after the Effective Date and until this Agreement is terminated or expires, the Parties shall deliver to any or all of the other Party's Facilities up to the Maximum Tonnage of Acceptable Waste, which delivered tonnage the Parties agree shall be exchanged on a ton- for-ton basis each month. The Parties, by mutual written agreement, may change the Maximum Tonnage. Acceptable waste allowable under this agreement may be delivered by the responsible parties or their respective contractors.
- b. Upon execution of this Agreement, each Party shall provide the other with its good faith projections, in writing, of the monthly tonnage, by Facility, that it expects to deliver to the other Party's Facilities. The projected tonnage may be reviewed and modified by either Party as deemed necessary; however, a Party may not deliver more than twenty-five percent (25%) above its projected tonnage to the other Party's Facilities without prior approval by the receiving Party. These projections are intended for planning purposes and are not to be considered contractual commitments to deliver such projected tonnage.

2.2 Acceptance Obligation

- a. From and after the Effective Date and until this Agreement is terminated or expires, the Parties shall accept the unloaded Acceptable Waste at their respective Facilities.
- b. The Parties acknowledge that the other Party's Facilities are not for their exclusive benefit.

2.3 Acceptable Waste Delivered

- a. PHOENIX and GLENDALE shall use their reasonable efforts to ensure that they only deliver Acceptable Waste to the other Party's Facilities. The Parties may refuse to accept Unacceptable Waste at their respective Facilities.
- b. The Parties 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. Therefore, the Parties agree to use their reasonable efforts to reciprocate with like-kind Acceptable Waste to minimize the delivery of that Acceptable Waste which requires special handling for disposal.
- c. The Parties recognize that although waste tires are Unacceptable Waste, they may on occasion be mixed with Acceptable Waste without knowledge or intent of the delivering Party. In such event, waste tires will be handled by the receiving Facility. However, should the receipt of such waste tires become a burden on the receiving Facility, the Parties agree to make a reasonable effort to resolve the problem.

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2.4 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 weigh scale operators. Each Party shall provide a certified tare weight for each such identified vehicle. Incoming Acceptable Waste shall be weighed by weighing all incoming vehicles and recording the weight of each. From time to time, PHOENIX or GLENDALE may require revalidation of the tare weight of any vehicle or re-weighing of unloaded trucks. The Parties, at no extra cost to the other, shall have the right to monitor the weighing of all vehicles delivering Acceptable Waste to the other Party's Facilities.
- b. The Facilities shall provide each vehicle operator with a computer copy of the weight ticket for that load.
- c. In the event the scales become temporarily inoperable due to testing or malfunction, PHOENIX and GLENDALE shall estimate the weight of Acceptable Waste delivered to their respective Facilities on the basis of truck volume and historical data obtained through operation of the Facilities. These estimates shall serve as official records for the duration of the scale outage. In such case, a handwritten ticket may be substituted for the computer copy.
- d. The Parties shall maintain weight records for all vehicles delivering Acceptable Waste to their Facilities.

2.5 Vehicle Turnaround Time All vehicles delivering Acceptable Waste to a Facility shall be able to enter the Facility, unload, and exit the Facility within a period of no longer than fifteen (15) minutes on average. The Parties shall provide experienced spotters at their Facilities to direct incoming drivers.

2.6 Delivery Vehicles Acceptable Waste may be delivered to the Facilities 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 Facilities shall be equipped to receive all vehicles that are lawfully used to transport solid waste and such Acceptable Waste.

2.7 Hot Loads In the event that a vehicle delivers a Hot Load, the Parties agree to pay reasonable charges for the other Party's handling of any Hot Load.

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**ARTICLE 3
STATEMENTS, RECORDS, AND AUDITING**

3.1 Monthly Reports. Weight Tickets and Monthly Reconciliation

- a. PHOENIX and GLENDALE shall electronically transmit to the other within five (5) working days after the end of a month a tonnage reconciliation report. These reports shall specify the tonnage of Acceptable Waste delivered and received by each of them from the other at their respective Facilities. PHOENIX and GLENDALE will have ten (10) working days to balance the tonnage received for the month at their respective Facilities.
- b. PHOENIX and GLENDALE shall provide to the other Party an electronic data file in a compatible file format for each month's transactions. The file shall contain, at a minimum, date fields for gross, tare and net weights, truck numbers, route number, transaction date, transaction number, type of material delivered, facility, total cost, and scale number. Any weight that was determined by estimate in accordance with Section 2.4.c shall be so noted on all records of such weights.

3.2 Tonnage Credits and Payments

- a. It is the intent of the Parties that each shall deliver to the other Party, up to the monthly maximum tonnage provided for under this Agreement
- b. At the end of each Fiscal Year, the Parties will reconcile their tonnage records. To the extent that one Party delivers Acceptable Waste in excess of that received from the other Party, the excess will accrue as a credit that allows the receiving Party to deliver that amount of Acceptable Waste to the other Party's Facilities in the future. During the term of this Agreement the credit for excess Acceptable Waste received will roll forward from month to month, and year to year as long as each Party desires to continue on that basis. In the alternative, the Party with a net credit at any fiscal year end, and at the termination of this Agreement, may invoice the other Party for the excess tonnage received at its standard tipping fee rate at the time of billing.

3.3 Record Keeping, Accounting, and Auditing

- a) The Parties shall keep and maintain complete and detailed records related to the delivery of Acceptable and Unacceptable waste and records providing the basis for invoicing requirements under this Article including: (1) tonnage of Acceptable Waste delivered by a Party to the other Party's facilities; 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. The Parties 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.

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- b) The Parties, or their audit representative, shall have the right at any reasonable time to inspect, copy, and audit the records, accounting records, vouchers, and their source documents which serve as the basis for costs, receipts, payments, and exchange of Acceptable Waste tonnage. The said records shall be available for inspection and audit for a period of three (3) years following the termination of this Agreement.
- 3.4 **Contractual Charges** At the request of either Party, the Parties may meet near the end of each fiscal year for a review of Contractual Charges for the next Fiscal Year.
- 3.5 **Other Charges** The Parties shall pay or reimburse the other at the next month's billing for the actual reasonable cost of the testing, inspecting, identifying, handling, and/or disposing of Unacceptable Waste pursuant to Article 7.
- 3.6 **Special Handling Fee** If a Party is either required or requested to provide special handling for disposal of certain Acceptable Waste due to its quantity or character, such Party may charge a reasonable special handling fee to the other Party.

**ARTICLE 4
TERM AND TERMINATION**

- 4.1 **Term of Agreement: Extension** The term of this Agreement shall begin on the Effective Date and terminates on June 30, 2015. This Agreement may be extended on terms and conditions acceptable to both PHOENIX and GLENDALE, and continue thereafter for one (1) additional period of three (3) years.
- 4.2 **Termination** Notwithstanding the provisions of Section 4.1, either Party may terminate this Agreement with or without cause at any time before the expiration of the initial term or any extension thereof upon sixty (60) days prior written notice.

**ARTICLE 5
GENERAL OBLIGATIONS OF PARTIES**

- 5.1 **Operation of Facilities** The Parties shall operate and maintain their respective Facilities in an efficient and workmanlike manner so as to fulfill their obligations under this Agreement.
- 5.2 **Maintenance of Permits** Except as otherwise set forth herein, neither PHOENIX nor GLENDALE shall take any action which would adversely affect the retention of all Facility permits in good standing.
- 5.3 **Compliance with Applicable Laws** PHOENIX and GLENDALE at all times shall comply with and adhere to applicable laws and regulations of the transfer and transportation of waste and the operation of their Facilities, and shall provide the other Party: (1) true, correct, and complete copies of any written notice of noncompliance or true and accurate transcripts of any oral notice of noncompliance issued or given by any

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governmental body or agency; and (2) prompt written notice describing the occurrence of any event of or the existence of any circumstance which does or may result in noncompliance or non-adherence, or of any action or proceeding of any nature alleging the same.

- 5.4 Weighing/Scaling of Deliveries** The Parties shall maintain the weighing devices/scales at their Facilities for the purpose of providing its services hereunder. The Parties shall test and re-calibrate 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 the Parties.

**ARTICLE 6
FACILITY OPERATIONS**

6.1 General Operational Terms

PHOENIX and GLENDALE, during the term and any extensions thereof, shall furnish all labor, materials, supplies, equipment, utilities, buildings, facilities, and supervision necessary or useful to perform the services required by them under this Agreement. The Parties' respective Facilities shall be capable of accepting and handling all Acceptable Waste delivered to them. PHOENIX and GLENDALE shall be solely responsible for the operation and maintenance of their respective Facilities and the handling of Acceptable Waste in accordance with the terms and conditions of this Agreement and shall be solely responsible for all costs associated herewith.

6.2 Hours and Days of Operation

- a. The GLENDALE Facility shall receive Acceptable Waste from 7:30 a.m. to 4:00 p.m., Monday through Friday, and 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.
- b. The PHOENIX Facilities, which includes the North Gateway and 27th Avenue Transfer Stations, shall receive Acceptable Waste from 5:30 a.m. to 5:00 p.m., Mondays through Fridays, and Saturday from 6 a.m. to 4 p.m. The PHOENIX Facilities close on the weekends at 3 p.m. during the months of June, July and August, and are also closed on Thanksgiving Day, Christmas Day, and New Year's Day. On all other City of PHOENIX holidays, PHOENIX may modify Facilities operating hours to meet its own operational schedule.

- 6.3 Right To Inspect** PHOENIX and GLENDALE shall have the right to enter and inspect the other's Facility and observe operations during operating hours. All such visits shall be conducted in a manner that does not cause unreasonable interference with the Parties' operations. The Parties shall require all persons to comply with their safety rules and regulations.

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**ARTICLE 7
UNACCEPTABLE WASTE**

7.1 Refusal or Rejection

- a. If a Party discovers Unacceptable Waste or waste that it suspects is Unacceptable Waste received from the other Party, the receiving Party shall:
- (1) Isolate, remove, and set aside that portion of the load which it determines is or may be Unacceptable Waste;
 - (2) Notify the delivering Party of the discovery within one (1) 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 day the delivering Party is open for business. Notice shall be deemed a notice of rejection of the Unacceptable Waste if such Unacceptable Waste is determined in accordance with this Section to have been provided by such other Party;
 - (3) Gather, preserve, maintain, and make available to the delivering Party all evidence demonstrating that the Unacceptable Waste was delivered pursuant to this Agreement;
 - (4) Test or arrange to have tested the Unacceptable Waste to ascertain whether that waste is Unacceptable Waste; and
 - (5) Allow the delivering Party to inspect such waste within twelve (12) hours of notice of the existence of such waste, and test the waste and examine all other evidence gathered by the receiving Party within seventy-two (72) hours after the discovery of such waste; for purposes of any inspection conducted pursuant to this Section, the delivering Party shall have access to the Facility and/or any other site at which the suspected Unacceptable Waste is located.
- b. A Party shall have the right to reject Unacceptable Waste for a period not to exceed seventy-two (72) hours after the load is tipped and emptied at its Facility by giving verbal notice to the other Party. Unacceptable Waste shall be deemed accepted if not rejected within this time period.
- c. If waste is not identifiable as PHOENIX or GLENDALE Unacceptable Waste because it has been substantially co-mingled with other loads, it shall not be considered PHOENIX or GLENDALE Unacceptable Waste unless substantial evidence of such status exists. If, after inspecting and/or testing the waste, the Party discovers no Unacceptable Waste or discovers that the Unacceptable Waste was not delivered to its Facility under this Agreement, such Party shall dispose of that waste at no additional cost to the other Party.

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- d. If Unacceptable Waste is discovered at the Facility and there is proof satisfactory to the delivering Party (acting reasonably) that the Unacceptable Waste was delivered to the Facility under this Agreement, the delivering Party shall, to the extent practicable, be allowed to promptly remove and dispose of the Unacceptable Waste. The delivering Party shall pay or reimburse the other Party for the actual reasonable cost of the inspection, testing, identifying, handling, and proper disposal of the Unacceptable Waste in accordance with Sections 3.5.

**ARTICLE 8
REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties of Phoenix PHOENIX hereby represents and warrants to GLENDALE that:

- a. PHOENIX has the full power and authority to execute and deliver this Agreement to GLENDALE and carry out the transactions contemplated hereby;
- b. PHOENIX has taken all necessary action to execute, deliver, and perform in accordance with this Agreement;
- c. Neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor PHOENIX's compliance with any of the terms and provisions hereof does or will contravene any existing law, judgment, governmental rule, regulation, or order applicable to or binding on it, which, if violated, would have a material adverse effect on PHOENIX's obligations under this Agreement;
- d. The PHOENIX Facility is appropriately permitted or licensed by Arizona Department of Environmental Quality to accept the Acceptable Waste and otherwise perform as required by this Agreement; and
- e. Upon execution and delivery of this Agreement by PHOENIX it will constitute a legal, valid, and binding obligation of PHOENIX enforceable against it in accordance with the terms hereof.

8.2 Representations and Warranties of GLENDALE GLENDALE hereby represents and warrants to PHOENIX that:

- a. GLENDALE has the full power and authority to execute and deliver this Agreement to PHOENIX and carry out the transactions contemplated hereby;
- b. GLENDALE has taken all necessary action to execute, deliver, and perform this Agreement;

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- c. Neither the execution and delivery hereof nor the consummation of the transactions contemplated hereby nor GLENDALE's compliance with any of the terms and provisions hereof does or will 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 material adverse effect on GLENDALE's obligations under this Agreement;
- d. The GLENDALE Facility is appropriately permitted or licensed by the Arizona Department of Environmental Quality to accept the Acceptable Waste and otherwise perform as required by this Agreement; and
- 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.

**ARTICLE 9
INDEMNITY**

- 9.1 **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. Each Party (as "indemnitor") further agrees to indemnify, defend and hold harmless the other Party and its officers, employees and elected or appointed officials (as "indemnitee") for, from and against any and all claims, losses, liability, costs or expenses, including reasonable attorney's fees arising out of the Parties failure to comply with all applicable laws, rules, and regulations.
- 9.2 **Environmental Indemnification** Each Party agrees to indemnify, defend, and hold harmless the other Party for the costs of removal or remedial actions under the Comprehensive Environmental Response, Compensation & Liability Act of 1980 (42 U.S.C. §§9601, et seq., also known as "CERCLA" or "Superfund") or comparable state law incurred as the result of either Party's treatment and disposal activities at a Party's landfill except to the extent such removal or remedial actions are caused by or arise out of the negligence or willful conduct of each City, its officers, employees, or agents. This indemnity shall apply only if a Party's waste conforms with the requirements of this Agreement.

ARTICLE 10

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OBLIGATIONS DURING FORCE MAJEURE

- 10.1 Notice Relating to Force Majeure** If any act or event of Force Majeure occurs which affects a Party's Facility, 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 forty-eight (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 Obligations 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 from the Party claiming Force Majeure; provided, however, the Party not claiming Force Majeure may deliver its Acceptable Waste to the other Party's Facility, if receipt is not prohibited by Force Majeure, by paying the Contractual Charges for all tonnage delivered during the existence of the 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 the Party giving notice shall use best efforts to eliminate and mitigate the consequences thereof. The Parties shall, during the Force Majeure, pay averaged Contractual Charges for the Acceptable Waste actually delivered to the other Party's Facility. At such time as the act or event of Force Majeure is cured, immediate verbal notice followed by written notice, shall be given to the other Party and all reasonable efforts shall be made to resume deliveries of Acceptable Waste as contemplated under this Agreement.

**ARTICLE 11
GENERAL PROVISIONS**

- 11.1 No-Assignment** Neither Party shall assign, transfer, convey, subcontract, pledge, or otherwise hypothecate this Agreement or its rights, duties, or obligations hereunder nor any part thereof without the prior written consent of the other Party, which may be withheld in its sole 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 this Agreement.
- 11.2 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.

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11.3 **Indulgences Not Waivers** Neither the failure nor any delay on the part of a 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.

11.4 **Notices** All official notices and approvals shall be in writing. Unless otherwise directed, such notices shall be hand delivered or delivered by certified or registered mail, return receipt requested to the Parties at the following respective addresses:

To City of Phoenix:

Mr. Tony Miano
City of Phoenix Public Works Department
Solid Waste Field Services Division
200 West Washington, 6th Floor
Phoenix, Arizona 85003

To City of Glendale:

Mr. Stuart Kent
Public Works Department
6210 West Myrtle Avenue, Suite 111
Glendale, Arizona 85301-1700

With a copy to:

City Attorney Office
City of Glendale
5850 West Glendale Avenue, Suite 450
Glendale, Arizona 85301

Either Party may from time to time designate a new address or a different person for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the third business day after its mailing.

11.5 **Remedies** The Parties to this Agreement, in addition to the right of termination 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

**RECIPROCAL SERVICES AGREEMENT
BETWEEN THE CITY OF PHOENIX AND THE CITY OF GLENDALE**

costs to the prevailing Party in connection with any dispute respecting any term of this Agreement.

- 11.6 Disputes** This Agreement shall be subject to arbitration as may be required by A.R.S. Section 2-1518.
- 11.7. Conflict Of Interest** The parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. Section 38-511, the provisions of which are incorporated herein and made a part hereof.
- 11.8 Inspection And Audit** All books, accounts, reports, files and other records relating to this Agreement shall be kept for five (5) years after termination of this Agreement, and shall be subject at all times to inspection and audit by either Party. Such records shall be produced at the Auditor General's Office or at the requesting Party's principal office within a reasonable time after their request.
- 11.9 Entire Agreement** This Agreement contains the entire understanding of the parties hereto. There are no representations or provisions other than those contained herein, any amendment or modification of this Agreement shall be consistent with Article III.
- 11.10 Invalidity Of Part Of This Agreement** The parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the parties.
- 11.11 Compliance With Non-Discrimination Laws** The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action.
- 11.12 Immigration Law Compliance**
- a. Each Party, and on behalf of any subcontracted Party, warrants to the extent applicable under A.R.S. § 41-4401, compliance with federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
 - b. Any breach of warranty under subsection 11.12.a above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
 - c. 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 subsection 11.12.a above.
 - d. Each Party may conduct random inspections, and upon request or notice to other Party shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection 11.12.a above. Each Party agrees to keep papers and records

**RECIPROCAL SERVICES AGREEMENT
BETWEEN THE CITY OF PHOENIX AND THE CITY OF GLENDALE**

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 11.12.

- e. 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 other Party.
- f. The warranty and obligations under this section for each Party is 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.
- g. 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.

11.13 Prohibitions Each Party certifies, to the extent applicable under the A.R.S. §§ 391 et seq. and 35-393 et seq., that neither has "scrutinized" business operations in Sudan or Iran.

[SIGNATURES ON NEXT PAGE]

**RECIPROCAL SERVICES AGREEMENT
BETWEEN THE CITY OF PHOENIX AND THE CITY OF GLENDALE**

Dated this 13th day of MARCH, 2012.

CITY OF PHOENIX, a municipal corporation
DAVID CAVAZOS, City Manager

By John A. Trujillo
John A. Trujillo
Its _____
Acting Public Works Director

ATTEST:

Carla Meyer
City Clerk



APPROVED AS TO FORM:

[Signature]
ACTING City Attorney *ADW*

PROJECT DIRECTOR APPROVAL

I have reviewed the terms of this agreement and they are acceptable to me. I request that an authorized signatory execute this Agreement on behalf of City of Glendale.

Date

CITY CLERK DEPT.
7007 MAR 13 PM 12: 29

**RECIPROCAL SERVICES AGREEMENT
BETWEEN THE CITY OF PHOENIX AND THE CITY OF GLENDALE**

Dated this 10th day of April, 2012.

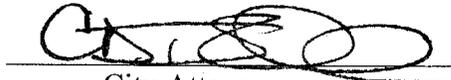
CITY OF Glendale, an Arizona municipal
corporation

By Horatio Skub for
Its Assistant City Manager

ATTEST


City Clerk

APPROVED AS TO FORM:


City Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of § 11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge that: (1) they have reviewed the above Agreement on behalf of their respective clients; and, (2) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.


City of Glendale


City of Phoenix

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
ELECTRONIC RECORDING
20120354923,04/27/2012 01:48,
C7995-19-1-1--N

CITY OF GLENDALE, ARIZONA

AGREEMENT C- 7995

(IGA with City of Phoenix, Public Works Department)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)