

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

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, an Arizona municipal corporation (hereinafter referred to as "PHOENIX") and the City of Glendale, an Arizona municipal corporation (hereinafter referred to as "GLENDALE"). PHOENIX and GLENDALE are collectively referred to as "Parties", and individually as "Party".

RECITALS

- A.** PHOENIX has two municipal solid waste transfer stations: the 27th Avenue Solid Waste Management Facility (the "27th Avenue Transfer Station") and the North Gateway Solid Waste Management Facility (the "North Gateway Transfer Station"). Together, these two transfer stations are hereinafter collectively referred to as the "PHOENIX Facility."
- B.** GLENDALE has a municipal solid waste landfill located at 11480 West Glendale Avenue (the "GLENDALE Landfill"). The GLENDALE Landfill, together with GLENDALE's transfer stations, are hereinafter collectively referred to as the "GLENDALE Facility."
- C.** PHOENIX and GLENDALE collect or cause the collection and 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."
- D.** Phoenix is empowered by Chapter 2, § 2 of the City of Phoenix Charter to enter into this Agreement, and by action of its City Council has been authorized to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Phoenix.
- E.** GLENDALE is empowered to enter into this Agreement pursuant to Article VIII of the Glendale City Charter and by appropriate action of its City Council.
- F.** Arizona Revised Statutes (A.R.S.), Sections 11-951 through 11-954 provide that public agencies may enter into intergovernmental agreements for the provision of services or for joint or cooperative action. The Parties hereto acknowledge that this Agreement constitutes an Intergovernmental Agreement within the meaning of A.R.S. § 11-952.
- G.** PHOENIX and GLENDALE believe it to be mutually beneficial for each Party to utilize the Facility owned by the other Party to enhance the operational efficiency of the collection and disposal of solid waste, including vehicle routing, avoidance of excessive travel times and distances, fuel economy, and reduction of pollution.

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H. Accordingly, both PHOENIX and GLENDALE desire to use the other's Facility in a safe and cost-effective manner, 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 municipal solid waste collected by the Parties in their respective Service Areas generated by residential-dwelling units, business, industrial, and commercial establishments, which consists of (1) household wastes; (2) non-hazardous commercial waste (originating from entities such as restaurants, stores, markets, theaters, hotels, and warehouses); (3) non-hazardous institutional waste material originating in schools, hospitals, research institutions, and public buildings; (4) small amounts of remodeling, demolition, roofing materials and other construction debris; and (5) 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 Facilities, as defined below). 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 that cannot be accepted at the Facility; as each such term is defined in this Agreement.

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

"Disposal Fee" means the greater of: (a) the fee charged at Phoenix Facility at the end of the Fiscal Year; or (b) the Tipping fee charged to other municipalities for disposal of solid waste at Glendale Facility at the end of the Fiscal Year. In FY 2024, Glendale's "Tipping Fee" is \$39.25 per ton, including the Environmental Fee. Phoenix's Gate Rate is \$55.00 per ton.

"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 or authorized to take effect by both Parties.

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

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"Force Majeure" means any act, event, or condition having a direct material adverse effect on the ability of a Party's 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 which adversely affects the: (1) operation of a Facility; (2) the right or ability of a Facility to accept or transport Acceptable Waste by road; or (3) the right or ability of a Facility 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 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, 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 quantity, concentration, or physical, chemical, or infectious 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 A.R.S. § 49-291; 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 a Facility that is emitting smoke, fire, or fumes and that may be in imminent danger of fire or explosion.

"Maximum Monthly Tonnage" means 900 tons per month of Acceptable Waste. Unacceptable Waste, although it may be delivered to a Party's Facility and either returned or disposed of by the receiving Party, will not be counted against the Maximum Monthly Tonnage.

"Maximum Annual Tonnage" means the Maximum Monthly Tonnage times twelve (12) months, or 10,800 tons. Unacceptable Waste, although it may be delivered to a Party's Facility and either returned or disposed of by the receiving Party, will not be counted against the Maximum Annual Tonnage.

"Service Area" means the geographic area where a Party collects solid waste for transport to and disposal in their respective Facilities. Each Parties' Service Area may include properties or customers outside its jurisdictional boundaries, such as Luke Air Force Base or other cities, towns or incorporated areas of Maricopa County.

"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 waste or any portion of waste that may not be disposed of, stored at, or transported to the Facilities, such as, but not limited to: (1) explosives, radioactive materials, medical waste or infectious waste; (2) residential cesspool waste, sewage, and sludge; (3) motor vehicles, including major motor vehicle parts, and agricultural and farm machinery and equipment; (4) waste tires; (5) used oil; (6) 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 either Facilities such as Hot Loads; or (7) waste not authorized for disposal at any Facilities 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.

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**ARTICLE 2
DELIVERY OF ACCEPTABLE WASTE**

2.1 Delivery and Tonnage Exchange

- a. The Parties agree that the total Maximum Annual Tonnage may be delivered by each Party to the other Party's Facility on a yearly basis. It is expected that the Parties will exchange Acceptable Waste on a reciprocal ton-for-ton basis each year.
- b. Each Party may deliver up to the Maximum Monthly Tonnage to the other Party's Facility in any month.
- c. If the Party delivering the Maximum Monthly Tonnage has not exceeded its Maximum Annual Tonnage, it may deliver up to 25% more (i.e., up to 225 tons) than the Maximum Monthly Tonnage without obtaining the prior approval of the other Party. However, a Party may not deliver more than twenty-five percent (25%) above its projected monthly tonnage (i.e., more than 225 tons over its monthly tonnage) to the other Party's Facility without prior approval by the receiving Party.
- d. A Party may deliver less than twenty-five percent (25%) above its Maximum Annual Tonnage (i.e., less than 2700 tons over its yearly tonnage) to the other Party's Facility without prior approval by the receiving Party. The Parties, however, may, by mutual written agreement or amendment to this Agreement, increase or decrease the Maximum Annual Tonnage.
- e. At the end of each Fiscal Year, the Parties will reconcile and compare their tonnage records and confirm that they have each delivered less than or equal to the Maximum Annual Tonnage agreed upon in this Agreement. If one Party delivers Acceptable Waste in excess of that received from the other Party, the Party receiving the excess will be given credit for the following fiscal year for the excess amount it received. For example, if it is determined that PHOENIX delivered 1,000 more tons to GLENDALE Facility in FY2025 than GLENDALE delivered to the PHOENIX FACILITY during the same period, GLENDALE may deliver up to an additional 1,000 tons to PHOENIX in FY 2026, even if the carryover "credited excess" would cause Glendale to exceed its Maximum Annual Tonnage in FY2026.

The Parties further agree that the Party holding any excess credit may: (1) use it in subsequent years on a monthly basis, or (2) invoice the other Party for the excess tonnage received at its then-current standard tipping fee rate at the end of the fiscal year; or (3) add the amount of the excess tonnage it received to increase the Maximum Annual Tonnage it can deliver to the other Party in the next fiscal year. The Party holding the excess credit should inform the other Party within 30 days of the beginning of the new fiscal year which option above it chooses to exercise.

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- f. Upon execution of this Agreement, each Party shall provide the other with its good faith projections, in writing, of the annual tonnage that it expects to deliver to the other Party's Facility. The projected tonnage may be reviewed and modified by either Party as deemed necessary. 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. PHOENIX and GLENDALE shall use their best efforts to ensure that they only deliver Acceptable Waste to the other Party's Facility. Each Party may refuse to accept any load at its Facility for good cause. Good cause is defined to include: (1) The quality or nature of waste requires it to be specially handled or disposed of; (2) Acceptable Waste is mixed with Unacceptable Waste and cannot be separated without devoting additional manpower or financial resources; or (3) any other characteristic of the waste that makes it reasonable to reject some or all of the load.
- b. The Parties may also reject loads of Acceptable Waste at their respective Facilities if acceptance of such loads would cause the Party to exceed its Maximum Monthly Tonnage or Maximum Annual Tonnage, or otherwise cause a breach of this Agreement, or otherwise violate the receiving Party's permit or other legal obligations.
- c. Each Party acknowledges that the other Party's Facility is not being used for its exclusive benefit.

2.3 Weighing of Waste Loads

- a. Each vehicle delivering a waste load shall have a vehicle identification number permanently affixed and conspicuously displayed on the exterior of the vehicle and which is readily visible by weigh scale operators. Each Party may provide a certified tare weight for each vehicle delivering Solid waste to its Facility. Incoming waste loads shall be weighed and the weight recorded. From time to time, PHOENIX or GLENDALE may require revalidation of the tare weight of any vehicle or may weigh any unloaded trucks. The Parties, at no extra cost to the other, shall have the right to monitor the weighing of all vehicles delivering waste loads to the other Party's Facility.
- 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 waste load 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.

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- d. Each Party shall maintain weight records for all vehicles delivering waste loads to its Facility in accordance with Section 3.3 below.

2.4 Vehicle Turnaround Time

All vehicles delivering waste loads to a Facility should be able to enter the Facility, unload, and exit the Facility within a period of fifteen (15) minutes. The Parties shall provide experienced spotters at their Facilities to direct incoming drivers and to expedite turnaround time. This fifteen (15) minute turnaround time is a target only. Parties are not subject to any claims of breach of this Agreement if vehicles do not meet this 15-minute time frame.

2.5 Delivery Vehicles

Waste loads may be delivered to a Facility in a variety of vehicles including, but not limited to, side loading, rear loading, and front-loading collection trucks, tractor/trailer vehicles, open top and closed roll-off containers, compactors, and any other open or closed vehicles. Each Facility shall be equipped to receive all vehicles that may be lawfully able to transport solid waste to it.

2.6 Hot Loads

The Parties will use their best efforts to prevent delivery of and to manage any Hot Load delivered to a Facility. In the event that a vehicle delivers a Hot Load, the Party delivering the Hot Load agrees to pay reasonable charges for the other Party's handling and disposal of any such Hot Load.

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

3.1 Monthly Reports: Weight Tickets and Monthly Reconciliation

- a. PHOENIX and GLENDALE shall each electronically transmit to the other on the 5th of every month a tonnage reconciliation report. These reports shall specify the tonnage of Acceptable Waste delivered, received, and disposed of by each Party from the other Party at its Facility. PHOENIX and GLENDALE will have ten (10) working days from receipt of the report to balance the tonnage received for the month at their respective Facilities. Records can be requested at any time from either Party for purpose of reconciliation, auditing, and/or validating transactions.
- b. PHOENIX and GLENDALE shall each 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.

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- c. Transaction records provided to PHOENIX must be in the standard formatting depicted in the example in "Appendix A". The data fields required in this standard formatting include in sequential order: Ticket number, Date-in (mm/dd/yyyy), Time-in (hh:mm AM or PM), Truck Number (City specific), Gross Vehicle Weight (in pounds), Tare Weight (in pounds), and Net Tons. These detailed transaction records will need to be uploaded electronically to the City provided website on a daily basis in Comma-Separated Values (CSV) file formatting, and at the beginning of each month reflecting the entire tonnage delivered during the prior month in CSV file formatting.

3.2 Record Keeping, Accounting, and Auditing

- a. The Parties shall keep and maintain complete and detailed records documenting the delivery of Acceptable Waste 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 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. 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.
- 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 five (5) years following the termination of this Agreement.

3.3 Disposal Fees

At the request of either Party, the Parties shall meet at the end of each fiscal year for a review of Disposal Fees for the upcoming Fiscal Year. Any increase in the amount or formula for calculating Disposal Fees must be agreed to by the Parties in a signed amendment to this Agreement.

3.4 Other Charges

The Parties shall pay or reimburse each other for the reasonable cost of the testing, inspecting, identifying, handling, and/or disposing of Unacceptable Waste pursuant to Article 7.

3.5 Special Handling Fee

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If a Party provides special handling for disposal of Acceptable Waste, such Party may charge any special handling fee incurred to the other Party, which may include the actual cost of the inspection, testing, identifying, handling, and proper disposal of such Acceptable Waste.

**ARTICLE 4
TERM AND TERMINATION**

4.1 Term of Agreement and Extension

The initial term of this Agreement will be for a period of twelve months beginning on or about March 1, 2025 and ending on March 1, 2026_____. This Agreement may be renewed in one (1) year increments for a total of four (4) renewal years upon written mutual agreement by the Parties.

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

Each Party shall operate and maintain its Facility in an efficient and effective manner so as to fulfill its obligations under this Agreement and comply with any approved state or federal law.

5.2 Maintenance of Permits

Except as otherwise set forth herein, neither PHOENIX nor GLENDALE shall take any action which would violate any term or condition of any Facility permit.

5.3 Compliance with Applicable Laws

PHOENIX and GLENDALE at all times shall comply with and adhere to applicable federal, state, and local laws and regulations. The Parties also agree to provide the other Party: (1) true, correct, and complete copies of any written notice of violation or noncompliance issued or given by any governmental body or agency; and (2) prompt written notice describing the occurrence of any event of or the existence of any circumstance which may be considered in noncompliance or a violation of any permit conditions or application law or regulation, or of any enforcement 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

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the scales at least once each quarter or more often if necessary or required by the Arizona Department of Weights and Measures. Calibration records shall be available for inspection by the other Party.

**ARTICLE 6
FACILITY OPERATIONS**

6.1 General Operational Terms

PHOENIX and GLENDALE shall furnish adequate labor, materials, supplies, equipment, utilities, buildings, facilities, and supervision to meet their obligations under this Agreement. PHOENIX and GLENDALE shall each be solely responsible for the operation and maintenance of its Facility and the handling of Acceptable Waste in accordance with the terms and conditions of this Agreement. Each Party shall also be solely responsible for all costs associated with meeting its obligations under this Agreement.

6.2 Hours and Days of Operation

- a. The GLENDALE Facility shall receive loads 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. Loads that will be arriving later than 4:00 p.m. need to be communicated to landfill staff at least one hour prior to close.
- b. The PHOENIX Facility shall receive loads from 5:30 a.m. to 5:00 p.m., Mondays through Fridays, and Saturday from 6:00 a.m. to 3:00 p.m. The PHOENIX Facility is also closed on Thanksgiving Day, Christmas Day, and New Year's Day. On all other City of PHOENIX holidays, PHOENIX may modify the Phoenix Facility's 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 interference with the Parties' operations. The Parties shall require all persons to comply with their safety rules and regulations.

**ARTICLE 7
UNACCEPTABLE WASTE**

7.1 Refusal or Rejection

- a. If a Party discovers Unacceptable Waste or waste that is suspected to be Unacceptable Waste is received from the other Party, the receiving Party shall:

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- (1) Isolate, remove, and set aside that portion of the load which was determined as or may be Unacceptable Waste;
 - (2) Notify the delivering Party of the discovery within one (1) hour of the 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;
 - (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 discovery 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.
- b. A Party shall have the right to reject Unacceptable Waste within 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 by PHOENIX or GLENDALE as Unacceptable Waste because it has been mixed or commingled with other loads, it shall not be considered PHOENIX or GLENDALE Unacceptable Waste unless evidence of the source of the waste is found. If, after inspecting and/or testing the waste, the receiving Party discovers no Unacceptable Waste or discovers that the other Party was not the source of the Unacceptable Waste, the receiving Party shall dispose of that waste at no additional cost to the other Party.
- d. If Unacceptable Waste is determined to have been delivered to the Facility by a Party, the delivering Party shall be allowed to promptly remove and properly dispose of the Unacceptable Waste. The delivering Party shall pay or reimburse the receiving Party for the actual cost of the inspection, testing, identifying, handling, and proper disposal of the Unacceptable Waste in accordance with Section 3.4 if the Parties have agreed in advance that the receiving Party will dispose of the Unacceptable Waste.

**ARTICLE 8
REPRESENTATIONS AND WARRANTIES**

8.1 Representations and Warranties of Phoenix

PHOENIX hereby represents and warrants to GLENDALE that:

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- a. PHOENIX has the full power and authority to execute and deliver this Agreement to GLENDALE and carry out its obligations hereunder; and
- b. 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.

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 its obligations hereunder; and
- b. 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.

**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 Facility except to the extent such removal or remedial actions are caused by or arise out of the negligence or willful conduct of each Party, its officers, employees, or agents. This indemnity shall apply only if a Party's waste conforms with the requirements of this Agreement.

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ARTICLE 10

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 a 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 Party's Facility, both Parties shall be excused from performance during the existence of the 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 Disposal Fees 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. During the Force Majeure, the Parties will pay the averaged Disposal Fees 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

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

To City of Glendale: Mrs. Michelle Woytenko, Director
City of Glendale Field Operations Department
Solid Waste Management Division
6210 West Myrtle Avenue, Suite 111
Glendale, Arizona 85301-1700

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 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. § 12-1518.

11.7. Conflict of Interest

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The Parties acknowledge that this Agreement is subject to cancellation provisions pursuant to A.R.S. § 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.

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 city, state and federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action, including Chapter 18 of the Phoenix City Code.

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 available for inspection during normal business hours and will cooperate in exercise of each Party's

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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

a. **No Boycott of Israel.** To the extent A.R.S §§ 35-393 – 35-393.03 are applicable, the Parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.

b. **Uyghur Forced Labor Prevention Act (UFLPA).** The Parties certify that it does not currently, and during the term of this Agreement, will not use:

- i. the forced labor of ethnic Uyghurs in the People’s Republic of China;
- ii. any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China; and
- iii. any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

c. **Lack of Appropriations**

Nothing in this Agreement guarantees that some or all of the funds necessary to comply with all of the Parties’ obligations under this Agreement will be appropriated or otherwise be available. The Parties’ agree to seek such appropriations in good faith from the City Council, and agree not to use the lack of appropriation as a substitute for termination for convenience. If sufficient funds are not appropriated or otherwise available, the Parties’ may unilaterally terminate this Agreement after providing thirty (30) days written notice. In the event the Parties’ provide such notice, neither Party will be entitled to a refund or offset of any amounts previously paid but will not pay any amounts that become due after providing such notice.

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CITY OF PHOENIX, a municipal corporation

Jeffery Barton, City Manager

By _____ Date _____

Felipe Moreno, Public Works Director

ATTEST:

By _____ Date _____

Phoenix City Clerk

APPROVED AS TO FORM:

By _____ Date _____

Julie M. Kriegh, City Attorney

CITY OF GLENDALE, a municipal corporation

Kevin Phelps, City Manager

By _____ Date _____

Kevin R. Phelps, City Manager

ATTEST:

By _____ Date _____

Julie K. Bower, Glendale City Clerk

APPROVED AS TO FORM:

By _____ Date _____

Michael D. Bailey, Glendale City Attorney

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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 Phoenix

City of Glendale