

INTERGOVERNMENTAL AGREEMENT FOR WASTE COLLECTION AND TRANSPORTATION MUTUAL AID

This Intergovernmental Agreement (“Agreement”) is entered into among Participating Arizona Cities and Towns listed in Appendix A to this Agreement as of _____, 2017 (the “Effective Date”) and as later added pursuant to Section 3.2 below. The participating Cities and Towns may be referred to collectively as “Parties” and individually as a “Party.”

1. **Definitions**

Aiding Party means the Party supplying Resources to a Requesting Party.

Authorized Designee means a Party’s employee that is authorized to request aid or supply aid under this Agreement.

Backfill Costs means the compensation of the Aiding Party’s replacement personnel who perform the regular duties of other personnel who are deployed to supply aid to a Requesting Party under this Agreement.

Costs mean the actual expenditures of funds by a Party supplying aid, including Backfill Costs and Indirect Costs.

Equipment means mechanical equipment and vehicles including but not limited to automated side loaders, bin/barrel delivery vehicles, front loaders, rear loaders, backhoes, front-end load tractors, pick-up trucks, mobile equipment, trailers, and dump trucks.

Indirect Costs means 10% of the total expenditures of funds by the Party supplying aid.

Inventory means non-mechanical equipment and containers including but not limited to large-volume containers, bins, and roll-off containers

Minor Damage means scratches, scrapes, or dings to Equipment and Inventory.

Moderate Damage means large dents or other damage requiring significant repairs before the Equipment and Inventory can be used again for its intended purpose.

Requesting Party means the Party requesting aid in the form of Resources from other Parties to this Agreement.

Resources means Equipment, Inventory, Supplies and Staff.

Severe Damage means damage requiring either outright replacement or major reconstruction of the Equipment and Inventory before it can be used again for its intended purpose.

Staff means the employees of the Aiding Party who are qualified, based on training and experience, and licensed as may be required by State Law and the Federal Motor Carrier Regulations, to operate the Equipment supplied.

Supplies means items necessary for operations and maintenance by a provider of solid waste services other than Equipment and Inventory, including but not limited to shovels, brooms, cones, etc.

2. Recitals

2.1 The Parties desire to enter into this Agreement pursuant to Title 11, Chapter 7, Article 3, Arizona Revised Statutes (A.R.S. §§ 11-951, *et seq.*) and the authorization of their respective legislative or other governing bodies.

2.2 The scope of this Agreement is to (1) provide procedures for the Parties to request and supply Resources for waste collection and transportation aid or other assistance for emergencies (i.e. storm response clean ups, etc.) to one another; and (2) provide the process for compensating an Aiding Party for supplying Resources to a Requesting Party.

3. Term of Agreement and Extension

3.1 This Agreement shall be in effect from the Effective Date through June 30, 2021, and if applicable, the date of any extension as set forth herein.

3.2 Any Party may terminate its participation in the Agreement at any time by indicating its intent to terminate in writing and submitting that written notification to the other Parties. A new party may join the Agreement by its governing body approving an unmodified copy of this Agreement at any time during the Term or an extension. A new Party shall, within ten (10) days of approval by its governing body, provide the other Parties with an executed signature sheet and a revised Appendix A.

3.3 The Parties may agree to extend the Term of this Agreement for one (1) additional term of five (5) years. Not later than March 1, 2021, each Party shall notify the other Parties of its desire to extend the Agreement for an additional five (5) years. The Parties that indicate a desire to extend the Term shall be the Parties to the Agreement after June 30, 2021; Parties that do not indicate a desire to extend will be deemed to have elected to terminate their participation in the Agreement. Subsequent extensions shall require an amendment to this Agreement pursuant to Section 11 below.

4. Procedure for Requesting and Supplying Aid

4.1 A Requesting Party that needs aid or assistance in excess of or supplementing its own Resources to respond to an emergency may request aid from any Party to this Agreement. Requests for aid shall identify (1) the basis or need for Resources, (2) the Resources needed, and (3) the estimated period of time during which such mutual aid shall be required.

4.2 After a Party receives a request for aid or assistance, the Party's Authorized Designee will promptly evaluate whether it is able to supply the Requesting Party with Resources. Following that evaluation, the Authorized Designee will promptly inform the Requesting Party whether it can supply Resources to aid the Requesting Party. If the Authorized Designee fails to respond within 48 hours, the request for aid or assistance will be deemed rejected.

4.3 To the extent the Aiding Party is able to supply the Requesting Party with Resources, the Authorized Designee will promptly inform the Requesting Party of: (1) the type and quantity of Resources it can supply; (2) the approximate arrival time of those Resources; (3) any special requirements the Requesting Party will need to utilize the Resources; and (4) any variations from the reimbursement provisions of this Agreement for said Resources.

4.4 In all instances, the Aiding Party shall render such mutual aid as it is able, taking into consideration the Aiding Party's commitments and operational obligations within its own jurisdiction. The Aiding Party shall be the sole judge of what mutual aid it is able to furnish to the Requesting Party.

4.5 The Aiding Party's Authorized Designee retains the right at any time to withdraw from the Requesting Party some or all of its Resources upon 24 hours-notice to the Requesting Party's Authorized Designee.

5. Obligations as Parties

5.1 Each Party shall have its Solid Waste Department Director (or equivalent), or his/her designee, serve on an informal committee comprised of such representatives of the Parties to this Agreement. The committee shall:

5.1.1 Meet at least annually to exchange the information required under Subsection 5.2;

5.1.2 Discuss any changes that may be needed for this Agreement;

5.1.3. Identify an Authorized Designee, or the Authorized Designee's delegate from each Party, including 24-hour contact information, and maintain

relatively current Resource information made available by the Party for mutual aid response. The Party's Authorized Designee shall be the contact person when a Requesting Party requires mutual aid;

5.1.4. Undertake all other responsibilities set forth in this Agreement; and

5.1.5. Conduct other actions as necessary to implement this Agreement.

5.2. In order to expedite the ability to obtain required insurance, within sixty (60) days of the Effective Date and at least annually thereafter, each Party shall send to the other Parties' designated committee members a list of its available Inventory and, for Equipment that may be made available by the Parties in implementing this Agreement, the following information:

5.2.1. Vehicle Identification Number (VIN).

5.2.2 Make/model.

5.2.3 Estimated value of the Equipment.

5.2.4 Registered owner of the Equipment.

5.2.5 Any special license or certification required to operate the Equipment.

5.2.6 Size of the trailer, if any, necessary to transport the Equipment.

5.3 The Requesting Party agrees that it will be responsible for any Minor Damage, Moderate Damage, or Severe Damage, including theft of Resources or fire damage, as well as any regular maintenance required to said Equipment and Inventory while in its care. A joint inspection will be conducted by the Requesting Party and Aiding Party at the time of pickup and drop-off of the Equipment and Inventory.

5.3.1 Any repairs for Minor Damage or Moderate Damage shall be approved by the Aiding Party prior to the start of the repair of the Equipment and Inventory.

5.3.2 Equipment and Inventory with Severe Damage must be returned to the Aiding Party for reconstruction or replacement, at the Requesting Party's cost.

5.4 Subject to Subsection 5.4.2 below, the Parties agree that only the Requesting Party's employees or the Aiding Party's employees are permitted to operate the Equipment supplied by an Aiding Party. No third parties are permitted to operate the Equipment.

5.4.1 Regardless of whether the Equipment will be operated by employees of the Requesting Party or Aiding Party, the Parties agree that the employee operating the Equipment will be qualified, based on training and experience, and licensed as may be required by State Law and the Federal Motor Carrier Regulations, to operate said Equipment.

5.4.2 Each Party shall inform the other Party if only that Party's employees may operate Equipment supplied by said Party.

5.5 Execution of this Agreement does not create a duty for any Party to provide aid or assistance to another. When a Party receives a request for assistance, the Authorized Designee will have absolute discretion to determine (1) whether Resources are available, and (2) whether to provide assistance to the Requesting Party. An Authorized Designee's decisions on the availability of Resources and whether to provide the requested assistance will be final and not subject to legal challenge.

6. Reimbursement Procedures

6.1. The Aiding Party must inform the Requesting Party of its intention to be reimbursed its Costs before supplying Resources to the Requesting Party; failure to do so shall prevent the Aiding Party from requesting reimbursement of its Costs from the Requesting Party for the time period beginning when the Resources are provided and ending on the actual date of notice of intent to be reimbursed. Notwithstanding the preceding, there is a presumption of Cost reimbursement for: (1) any Equipment provided for in excess of five (5) business days; or (2) Inventory or Supplies that are consumed through use by the Requesting Party, unless otherwise agreed between the Requesting Party and the Aiding Party in writing.

6.2 If the Aiding Party timely informs the Requesting Party of its intention to be reimbursed for its Costs for the supplied Resources, the Requesting Party shall reimburse the Aiding Party for all Costs when any mutual aid requested is supplied.

6.2.1 The Requesting Party shall reimburse the Aiding Party after receipt of an itemized invoice and documentation of all allowable costs of labor, equipment, and materials. The Parties will use equipment rates based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates unless otherwise agreed in advance in writing.

6.2.2 In the event the Resources to be supplied are not included in the schedule of FEMA equipment rates, the Aiding Party must provide such rates for those particular Resources in writing to the Requesting Party and the Parties must mutually agree, in writing, to those rates prior to the Resources being supplied.

6.3 While any Resources are in the care, custody and control of the Requesting Party, the Requesting Party shall be responsible for any physical damage or loss to the Resources, normal wear and tear excepted. The Requesting Party shall be solely responsible for all safety inspections of any Resources during the period of use.

6.4 Notwithstanding any other provision of this Agreement, the Requesting Party must reimburse the Aiding Party in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable Supplies. The Aiding Party will not charge direct fees or rental charges to the Requesting Party for other Supplies and reusable items that are returned to the Aiding Party in a clean, damage-free condition. The Aiding Party and the Requesting Party will treat reusable Supplies that are returned to the Aiding Party with damage as expendable Supplies for purposes of Cost reimbursement.

6.5 The Aiding Party must provide an itemized invoice to the Requesting Party for all Costs and expenses it incurred as a result of providing assistance under this Agreement. The Aiding Party will submit the itemized invoice to the Requesting Party no later than ninety (90) days following the end of the period of assistance. The Requesting Party will pay the full amount due no later than forty-five (45) days following the invoice date. Any amount that the Requesting Party leaves unpaid after 45 days will accrue interest at the statutory annual interest rate of 10% pursuant to A.R.S. § 44-1201.

6.6 Both Requesting and the Aiding Party must provide notice to all potential disposal sites that the Equipment is being used by the Requesting Party to ensure proper billing.

7. **Indemnification**

Each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party (as "Indemnitee") from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims result in vicarious or derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers. This indemnification shall survive termination of this Agreement or the termination of the participation of any of Party.

8. **Worker's Compensation Claims**

Each Party will be responsible for any injuries which may occur to its own Staff during the course of rendering mutual assistance pursuant to this Agreement. In

accordance with A.R.S. § 23-1022, each Party will be deemed the primary employer and will have sole responsibility for the payment of worker's compensation benefits to its respective Staff. Each Party will comply with the notice provisions of A.R.S. § 23-1022(E).

9. Notice of Claim or Suit

A Party who becomes aware of a claim or suit that in any way, directly or indirectly, contingently or otherwise, affects or might affect other Parties of this Agreement will provide prompt and timely notice to the Parties who may be affected by the suit or claim. Each Party reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

10. Insurance

Each Party will bear the risk of its own actions, as it does with its operations, and determine for itself what kinds of insurance, (including self-insurance), and in what amounts, it should carry. Nothing herein will act or be construed as a waiver of any sovereign immunity or other exemption or limitation on liability that a Party may enjoy.

11. Amendment

This Agreement may be modified only by a written amendment approved by the governing body of each Party.

12. Dispute Resolution

12.1. The Parties agree that, notwithstanding the existence of a dispute between or among the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations that are required of it and that are not related to the dispute.

12.2. This Agreement shall not be construed or interpreted to prohibit a Party from seeking injunctive relief for the preservation of property.

12.3. In the event of a dispute, the Parties agree to use arbitration to the extent required under A.R.S. § 12-133 and A.R.S. § 12-1518.

13. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Maricopa County, Arizona.

14. Severability

If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to obtain the practical benefits of this Agreement. If any law or court of competent jurisdiction prohibits or excuses any Party from undertaking any contractual commitment to perform any act under this Agreement, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Party to take such action at its discretion, if such a construction is permitted by law. In accordance with the provisions of A.R.S. § 41-194.01, should the Attorney General give notice to any Party that any provision of this Agreement violates state law or the Arizona Constitution, or that it may violate a state law or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from this Agreement and the Parties shall, within ten (10) days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s). If the Parties are unable to negotiate a resolution to any issues related to the severed provision(s), the Parties may terminate this Agreement in accordance with the provisions hereof.

15. Headings

Section headings are inserted in this Agreement solely for convenience and the section headings shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

16. E-Verify

To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Failure by any Party to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement. To the extent authorized under A.R.S. § 44-4401, each Party shall have the right to inspect the papers of each of the others, their subcontractors, or any employee of either who performs work hereunder for the purpose of ensuring that the other party or subcontractor is in compliance with the warranty set forth in this provision.

17. Non-Appropriation

Notwithstanding any other provision in this Agreement, any Party may withdraw from this Agreement if for any reason the Party's governing body does not appropriate sufficient monies for the purposes of this Agreement. In such event, a withdrawing Party will have no further obligation to the other Parties other than for payment for services rendered prior to withdrawal.

18. Compliance with Laws

Each Party will comply with all federal, state and local laws, rules regulations, standard and Executive Orders, without limitation to those designated within this Agreement. The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of the Agreement and any disputes hereunder. Any changes in the governing laws, rules and regulations during the terms of this Agreement will apply but do not require an amendment of this Agreement.

19. Jurisdiction

Nothing in this Agreement will be construed as otherwise limiting or extending the legal jurisdiction of any Party. Nothing in this Agreement is intended to confer any rights or remedies to any person or entity that is not a Party under this Agreement.

20. Conflict of Interest

This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

21. Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

22. Israel

Each Party certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in A.R.S. § 35-393, of Israel.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF AVONDALE, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Avondale

City Attorney

CITY OF BUCKEYE, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Buckeye

City Attorney

CITY OF CHANDLER, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Chandler

City Attorney

TOWN OF GILBERT, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

Town Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
Town of Gilbert

Town Attorney

CITY OF GLENDALE, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Glendale

City Attorney

CITY OF MESA, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Mesa

City Attorney

CITY OF PEORIA, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Peoria

City Attorney

CITY OF PHOENIX, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Phoenix

City Attorney

TOWN OF QUEEN CREEK, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

Town Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
Town of Queen Creek

Town Attorney

CITY OF SCOTTSDALE, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Scottsdale

City Attorney

CITY OF SURPRISE, a municipal corporation

By _____

Title _____

Date _____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Surprise

City Attorney

CITY OF TEMPE, a municipal corporation

By _____

Title_____

Date_____

ATTEST:

City Clerk

APPROVED AS TO FORM and within
the power and authority granted
under the laws of Arizona to the
City of Tempe

City Attorney

APPENDIX A
TO
INTERGOVERNMENTAL AGREEMENT FOR
WASTE COLLECTION AND TRANSPORTATION MUTUAL AID

[Participating Arizona Cities and Towns]

City of Avondale
City of Buckeye
City of Chandler
Town of Gilbert
City of Glendale
City of Mesa
City of Peoria
City of Phoenix
Town of Queen Creek
City of Scottsdale
City of Surprise
City of Tempe