

**DRAFT**  
**2/26/16**

**FIRST AMENDMENT TO THE AGREEMENT FOR OPERATION  
OF MUNICIPAL SOLID WASTE LANDFILL AND RELATED  
OFFSITE AND ROADWAY IMPROVEMENTS**

THIS FIRST AMENDMENT to the above-referenced agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, ("the Execution Date") by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation ("City"), and APACHE JUNCTION LANDFILL CORPORATION, an Arizona corporation, ("AJLC"), sometimes both collectively referred to as the "Parties" or individually as a "Party".

**RECITALS**

A. On June 12, 1998, City and AJLC, a wholly-owned subsidiary of Allied Waste Industries, Inc., entered into an operational agreement (the "Host Agreement") for the landfill located south of Baseline Avenue at the Tomahawk Road alignment (the "Landfill"). The Host Agreement also contained offsite and roadway improvement provisions.

B. The operational items included the following, among other things: tonnage fees paid to the City (\$1.00 per ton); quarterly cleanup program for city residents; maintenance requirements for Tomahawk Road; utility line connections for landfill activities; indemnification; insurance; and hours.

C. The city council adopted Ordinance No. 1023 on January 20, 1998 which amended the City of Apache Junction Zoning Ordinance relating to special use permits involving certain environmentally sensitive uses including potential landfill activities.

D. The city council adopted Ordinance No. 1034 on May 19, 1998 which allowed the landfill to be expanded another 89 acres surrounding the original 40 acre footprint, for a total of 129 acres. (See Attachment A, the Site Plan).

E. In accordance with Ordinance No. 1034, AJLC has completed installation of a 12-inch water utility line and related water infrastructure.

F. On December 5, 2008, Allied Waste Industries, Inc. (the then-ultimate parent company of AJLC, merged with and into a subsidiary of Republic Services, Inc. ("Republic Services"). At that time AJLC became a subsidiary of Republic Services.

G. Recent discussions between the Parties have commenced to identify when the closure of the Landfill will take place how high the Landfill can exist for community planning and aesthetic purposes and future budgetary projections, and necessary steps related to completion of both legal and physical improvements for Tomahawk Road, among other things.

H. The Parties have come to a consensus on closure and related items and this First Amendment reflects the Parties' understanding of such items.

### AMENDMENT

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to amend the Host Agreement as follows:

A. Section 2, Tonnage Payment; Notification of Opening of Expanded Landfill; is retitled as "Section 2 Tonnage Payments" and is amended as follows:

A. Tonnage Payments. Upon the Effective Date, AJLC shall pay City One Dollar and Twenty Five Cents (\$1.25) per ton for waste received at the Landfill. Payment shall be made to City no later than forty-five (45) calendar days from the end of each month in which the waste is received. The Parties acknowledge that AJLC now weighs each load of waste as it enters the Landfill, and that upon the Effective Date, these measured weights will be the basis for calculating the tonnage. Such records shall be available upon request of City.

B. Increased Tonnage Payments. Effective each January 1<sup>st</sup> of every fifth (5<sup>th</sup>) year anniversary this Amendment is in effect, the fees shall increase ten cents (\$0.10) per ton. Notwithstanding this increase, on January 1, 2030 and each January 1<sup>st</sup> each year until the Closure Date, the tonnage fee shall increase ten cents (\$0.10) per ton.

B. Section 4, Disposal Participation, is amended to include the following sentence after the existing paragraph:

The quarterly Apache Junction Resident free dump week shall be continued under the current terms, conditions and volume restrictions in place until the Closure Date.

C. Section 6, Travel Routes and Road Maintenance, is amended to include the following additional language after the first existing, as follows:

No more than five years before the Closure Date, City will file an application with the Arizona State Land Department ("ASLD") requesting right-of-way title to the Tomahawk Road alignment south of Baseline Road to the Landfill entrance. AJLC will pay all costs associated with the preparation, submittal and processing of the application and all acquisition costs for the right-of-way. The Parties acknowledge their mutual intent that the processing of the ASLD application should be fully completed prior to the Closure

Date. Provided that City obtains right-of-way to the alignment referenced above no later than six (6) months after the Closure Date, AJLC will improve the Tomahawk Road alignment south of Baseline Road to the Landfill entrance and shall meet the then current road standards of the City for a road as reasonably determined appropriate by the City Engineer. AJLC shall dedicate to the City, and City shall accept, such improvements within six (6) months after the Closure Date.

D. Section 12, Duration of Agreement, is amended as follows:

The Parties acknowledge that the Agreement commenced as of June 12, 1998. This First Amendment shall become effective (the "Effective Date") thirty days (30) following City Council approval of a new zoning ordinance, as described below in Section 20(B) of this First Amendment. The Closure Date shall be no later than December 31, 2035.

E. Section 14, Entire Agreement, is amended in its entirety as follows:

This Agreement and any attachments represent the entire agreement between City and AJLC and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

F. Section 15, Severability, is amended in its entirety as follows:

City and AJLC each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute,

acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

- G. New Section 18, Closure Plans, shall be created and read as follows:

18. Closure Plans.

A. On December 31, 2033, AJLC is obligated to pay City One Million Five Hundred Thousand Dollars (\$1,500,000.00) for City to use as it deems appropriate for post-Landfill closure measures acceptable to the then city council. City may only use these funds for plans, maintenance and improvements at the Landfill for a passive public park activities or infrastructure, (see Attachment B, the Park Conceptual Plan) and may not use the funds for projects located elsewhere in City.

B. City may develop a landscaping plan for post-closure aesthetics. City may also develop and propose a future use agreement for post-closure use of the landfill by the public. The Parties agree that post-closure use of the landfill by the public shall be in the general nature of passive public uses (for example, hiking trails), not active public uses (for example, ball fields) (see Attachment B, the Park Conceptual Plan).

C. Any post-closure plan or future use plan City develops is subject to AJLC's review, input and approval, which approval may not be unreasonably withheld by AJLC. AJLC has an absolute right to reject any post-closure plan or future use plan that is within one hundred (100) feet of any methane or other gas release or capture facility on the Landfill site, or that would interfere with any associated gas transportation or collection system.

D. The payment obligation set forth in subsection A above shall be paid in five (5) equal installments of Three Hundred Thousand Dollars (\$300,000) with the first payment due on December 31, 2031, and the remaining equal installments due on December 31, 2032, December 31, 2033, December 31, 2034, and December 31, 2035.

- H. New Section 19, Fencing Costs, shall be created and read as follows:

19. Fencing Costs.

A. Thirty (30) months prior to the Closure Date, AJLC shall procure bidders using a publicly bid procurement procedure as directed by City representatives, for the cost of a site perimeter enclosure and cost of a six (6) foot tall masonry wall perimeter set

forth therein. City shall identify the most responsible and responsive bidder.

B. Twenty-seven (27) months before the Closure Date, City and AJLC shall agree to an appropriate form for a site perimeter enclosure. The Parties acknowledge that they may agree at that time that a six (6) foot tall masonry wall may not be the appropriate form for a site perimeter enclosure and that there may be other suitable alternatives, but in no case will it be chain link fencing.

C. No later than twenty-one (21) months before the Closure Date, AJLC shall cause the site perimeter enclosure to be completed. AJLC may use a contractor of its own choosing, and is not obligated to use any of the bidders referenced in subsection (A) immediately above. City has the right to inspect and comment upon the construction and not approve the work if it is substandard in the reasonable opinion of the Building Inspector.

D. No later than eighteen (18) months before the Closure Date, AJLC shall provide industry acceptable accounting of construction costs to City, which shall have thirty (30) calendar days to comment. At the end of the comment period, AJLC shall issue payment to City of the cost difference, if any, between actual construction cost and the six (6) foot masonry wall bid cost obtained in accordance with subsection (A) immediately above. This payment, if any, is in addition to the payment obligation set forth in Section 18 above. City may only use these funds for plans, improvements and maintenance at the Landfill, and may not use the funds for projects located elsewhere in City.

I. New Section 20, Height Adjustment, shall be created and read as follows:

20. Height Adjustment.

A. The Parties agree that pursuant to Ordinance No. 1034, the height of the Landfill was set at 1,700 feet AMSL overall, 1,685 feet AMSL solid waste storage limit with 15 feet storage allowed above solid waste.

B. The Parties agree that the height may be adjusted to 1,723 feet AMSL overall, 1,720 feet AMSL solid waste storage limit, provided the council passes and adopts the expansion levels in a new zoning ordinance.

J. New Section 22, Definitions, shall be created and read as follows:

22. Definitions.

“Closure Date” means the date on which the Landfill permanently ceases to accept solid waste for disposal.

K. All other terms of the Host Agreement and the zoning entitlement ordinance (as amended), shall remain in full force and effect except as specifically modified by this Amendment. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be signed by their duly authorized representatives as of the day and year first above written.

APACHE JUNCTION LANDFILL  
CORPORATION, an Arizona corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF APACHE JUNCTION, ARIZONA, an  
Arizona municipal corporation

By: John S. Insalaco  
Its: Mayor

ATTEST:

\_\_\_\_\_  
Kathleen Connelly, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
R. Joel Stern, City Attorney

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Apache Junction Landfill Corporation, an Arizona corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA )  
 ) ss.  
County of Pinal )

The foregoing was subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by John S. Insalaco, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: