

**AGREEMENT FOR OPERATION OF
MUNICIPAL SOLID WASTE LANDFILL AND
RELATED OFFSITE AND ROADWAY IMPROVEMENTS**

THIS AGREEMENT is made and entered into this 12th day of June, 1998, by and between THE CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation (hereinafter referred to as "City"), and APACHE JUNCTION LANDFILL CORPORATION, an Arizona corporation (hereinafter referred to as "AJLC").

W I T N E S S E T H :

WHEREAS, AJLC is an Arizona corporation, whose principal activities consist of the collection, transportation, management and disposal of solid waste; and

WHEREAS, AJLC has an existing forty (40) acre landfill ("existing landfill") which is located within the boundaries of City; and

WHEREAS, AJLC has proposed to expand the existing landfill and increase the property by eighty-nine (89) acres so that the total property will be one hundred twenty-nine (129) acres ("expanded landfill"); and

WHEREAS, City has determined that the expanded landfill will benefit the citizens of City through stabilized rates and other consideration and, therefore, agrees to assist AJLC in expediting any City permits which are necessary for the expanded landfill; and

WHEREAS, City desires to have AJLC assume certain obligations and AJLC desires to assume those obligations as hereinbelow set forth in the operation of the landfill site.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Recitals. The above recitals are incorporated in this Agreement.
2. Tonnage Payment; Notification of Opening of Expanded Landfill. Upon receipt from AJLC of ADEQ's authorization to receive waste into the expanded area of the landfill, AJLC shall pay City One Dollar (\$1.00) per ton for such waste received. Payments shall be made to City not later than forty-five (45) days from the end of the month in which the waste was received. The tonnage shall be calculated by using the Arizona Department of Environmental Quality ("ADEQ") conversions

of three (3) compacted cubic yards per ton and six (6) un-compacted cubic yards per ton. AJLC shall notify City by first class certified mail, return receipt requested, to the City Manager, Apache Junction City Hall, 1001 N. Idaho Road, Apache Junction, Arizona, 85219, of the official opening date of the expansion cell. After six (6) months of receiving additional waste in the landfill pursuant to ADEQ's authorization, should City at its sole discretion and through its City Manager determine that City desires a computerized weigh station to measure tonnage, City may require AJLC, its heirs, designees or assigns, at its sole expense, to install said weigh scales within six (6) months from such written notification to AJLC. Weigh scales are defined as computerized scales similar in type and design with landfills operating under Subtitle D regulations. In the event weigh scales are installed, all vehicles entering the landfill to dispose of solid waste must be weighed.

3. Record Keeping and Inspection Rights. AJLC shall keep accurate records and accounts of waste yardage/tonnage received at the landfill. City shall have open and complete rights to inspect and audit all waste delivered to the expanded area. Such rights extended to City staff and/or agents thereof include: (1) unannounced visits and inspections to all areas of the landfill site; and (2) reasonable access for inspection and photocopying of all books and records related to tonnage, gross receipts and other papers documenting the operation of the landfill. Such rights shall be exercised by City during the regular business hours referenced in paragraph 10 of this Agreement. If such records are maintained at another location, City staff shall have the same unrestricted access at such location and shall be permitted to review and photocopy any and all such records related to the operation of the landfill. Said records shall be maintained only for the then most recent 12-month period and City's right to review the records shall be limited to that 12-month period. Such records retained by City shall be considered the property of AJLC. Disclosure of such records shall be limited to only what is required to be disclosed pursuant to the Arizona Public Records Act under Title 39 of Arizona Revised Statutes Annotated, and any applicable federal laws related to access to public records.

4. Disposal Participation. AJLC will provide free disposal support for City's quarterly cleanup. City cleanups are intended for individual residents and not commercial activities. All advertising and notification of the free disposal days shall be City's responsibility.

5. Fees and Charges for Residents of City. Subject to the terms of this paragraph, AJLC agrees to limit increases in fees and charges for the receipt and disposal of solid waste at the expanded landfill for residents of City. Fee increases shall not exceed the National Consumer Price Index ("CPI"), as averaged on a yearly basis and reported in January of each year by the United States Department of Labor, Bureau of Labor Statistics. Such increase shall only be effective upon AJLC's tendering of its Notice of Intent to Increase Fees by prepaid, first class mail,

return receipt requested, to the Apache Junction City Manager, a minimum of sixty (60) days before such increase takes effect. In no case shall any properly noticed increase take place before April 30th of any year in which this Agreement remains enforceable. No such limitation shall apply to non-residents of City or commercial customers. AJLC will establish its own rules and regulations to regulate and determine whether all of the waste being brought to the landfill is that of City residents. City residents are defined as households within City that receive residential pickup and individuals delivering their own waste to the landfill who can show adequate proof they reside in the corporate limits of City. The parties also agree that this fee limitation is conditioned upon City adopting an ordinance which shall limit trash collection to two (2) specific days per week. Should any regulatory branch of government impose significant new regulations, ordinances or laws which increase the costs associated with the operation and maintenance of the landfill, AJLC and the City shall negotiate an increase in the above-referenced limitations to compensate AJLC for the increased cost due to said regulations, ordinances or laws. Further, if the City chooses to franchise waste hauling within the City, all waste generated in the City shall be delivered to the Apache Junction landfill once a new agreement has been ratified by the Apache Junction City Council containing a new discounted rate for City residents.

6. Travel Routes and Road Maintenance. AJLC shall instruct its commercial customers that they should enter the expanded landfill via Tomahawk Road. Additionally, until such time the municipal solid waste operations permanently terminate, AJLC shall be responsible for the general maintenance of Tomahawk Road from Baseline Road to the landfill entrance. "General Maintenance" shall mean that the condition of Tomahawk Road will be maintained to the same standards of other similar roads within City. AJLC will pay for all improvements on or to Tomahawk Road from Highway U.S. 60 to Baseline Road.

7. Utility Line Extensions. AJLC shall be responsible for all water and sewer line extensions which are related to the expanded landfill, as determined by the Water Utility Community Facilities District ("WUCFD") and the Superstition Mountain Community Facilities District ("SMCFD").

8. Indemnification. AJLC covenants and agrees to fully indemnify, hold harmless and defend City and its directors, officers, agents, servants and employees from and against any and all claims or actions of whatsoever kind of character, whether real or asserted, arising out of or in connection with this Agreement and from the operation of the landfill, except to the extent such claims or suits arise out of or are based upon acts or omissions by City or its directors, officers, servants, employees or agents. If any action or claim shall be brought or asserted against City, or its directors, officers, agents, servants or employees for which indemnity may be sought from AJLC, then City, or any such person, shall promptly notify AJLC in writing. AJLC shall, within ten (10) working days of

receiving such notice, assume the defense thereof, including employment of legal counsel of City's choice and the payment of all expenses, including attorneys fees and court costs which shall be paid as incurred. This indemnification provision shall apply to any and all acts or omissions, willful misconduct or negligent conduct, whether passive or active, on part of AJLC, its directors, employees and agents. This section shall survive the expiration or early termination of the Agreement.

9. Insurance. Prior to commencing construction of the facility, AJLC shall obtain and shall maintain in effect throughout the entire term of this Agreement, general liability insurance covering the Property and all operations thereon in the aggregate amount of not less than \$100,000,000 and in the amount of not less than \$100,000,000 per occurrence. In addition, prior to accepting any solid waste for disposal at the facility, AJLC shall obtain, and shall maintain in effect throughout the term of this Agreement, pollution liability insurance in the aggregate amount of \$5,000,000 and in the amount of \$5,000,000 per occurrence. All insurance shall name "City of Apache Junction, its officers, employees, and agents" as additional insured parties. The deductible amount of said policies shall be in any amount deemed reasonable by AJLC. In the event of any lapse in said insurance it shall be a material default under this Agreement. AJLC will also maintain liability insurance in the form of an umbrella policy in the amount of no less than \$5,000,000.

10. Operation of Landfill. Expanded landfill hours of operation will be 6:00 a.m. to 4:00 p.m. Monday through Saturday. AJLC will be responsible for obtaining all necessary permits, zoning changes and other governmental approvals necessary to operate the facility. AJLC shall operate and maintain the facility in a manner consistent with industry standards and in compliance with all applicable federal, state and local laws, rules, regulations, permits and orders of any governmental entity having jurisdiction over the operation of a municipal solid waste facility and activities related thereto including without limitation, the solid waste facility plan approved by ADEQ.

11. Relationship of Parties. It is agreed for all purposes hereunder, that AJLC is and shall be an independent contractor and shall not, with respect to its acts or omissions, be deemed an agent or employee of City. This Agreement is not intended to create, and shall not for any purpose be construed as creating, a partnership or joint venture.

12. Duration of Agreement. This Agreement shall commence as of the date hereof and shall terminate on the date notice is given to the ADEQ that final grades have been attained at the landfill. Such notice must be personally served on City at the City Manager's Office, located at the address referenced in paragraph 2, *supra*, at the same time such notice is given to ADEQ.

13. Binding Effect/Assignment. The obligations and rights created in this Agreement are binding upon and shall inure to the benefit of the parties and their successors, assigns and legal representatives. Neither party may assign its rights under this Agreement without the prior written approval of the other parties. Such successor or assignee shall assume, in writing, all duties and obligations hereunder of the prior party and shall further agree to be bound by and to fully perform the terms of this Agreement.

14. Entire Agreement. This instrument contains the entire agreement between the parties hereto with respect to the subject matter contained in it and supersedes all prior and contemporaneous agreements, discussions and representations related thereto. No supplement, modification or amendment hereof shall be binding and effective unless in writing and signed by all of the parties.

15. Severability. In the event that any sentence, paragraph, provisions or other portion of this Agreement is declared by a court of competent jurisdiction to be void, such sentence, paragraph, provision or portion of this Agreement shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in effect.

16. Governing Law, Venue, and Attorney Fees. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including reasonable attorneys fees to be determined by the court in such action.

17. Conflicts of Interest. The provisions of Arizona Revised Statutes Annotated ("A.R.S.") §38-511 relating to cancellation of contracts due to conflicts of interest shall apply to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

APACHE JUNCTION LANDFILL
CORPORATION, an Arizona corporation

By: 

Title: Arizona District Manager

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this 27 day of May, 1998, by MICHAEL COSTELLO
DISTRICT MANAGER

Witness my hand and official seal.

My Commission Expires: Dec, 10, 2001



Suzanne Oliva
Notary Public

ATTEST:

Dennis E. Wilkinson
Secretary

APPROVED AS TO FORM:

Mike J. Curley
Mike J. Curley, Counsel
for Apache Junction
Landfill Corporation

CITY OF APACHE JUNCTION, ARIZONA,
an Arizona municipal corporation

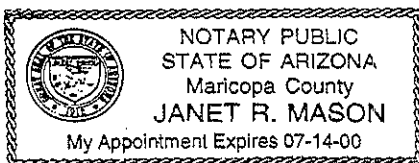
By: Douglas Coleman
DOUGLAS COLEMAN, Mayor

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this 12th day of JUNE, 1998, by Douglas Coleman, Mayor of the City of Apache Junction, Arizona.

Witness my hand and official seal.

My Commission Expires: 7-14-2000



Janet R. Mason
Notary Public

ATTEST:

Kathleen Connelly
Kathleen Connelly, City Clerk

APPROVED AS TO FORM:

RS 6-4-98
Richard J. Stern, City Attorney