

When recorded, mail to:
Clerk's Office
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF FLAGSTAFF

AND

COCONINO COUNTY

This Agreement is made as of November ___, 2012 by and between the City of Flagstaff (the "City"), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Coconino County (the "County").

RECITALS

Currently, households and small businesses within the County are permitted to bring hazardous wastes to the City of Flagstaff's Hazardous Products Center (the "Center") for safe and proper disposal. Since 2002 the County has reimbursed the City 5% of the Center's total labor cost as well as a percentage of the Center's total operational expenses and reimbursement for this agreement is 10%. This agreement will expire around August 2014, and the reimbursement rate for total labor costs for the next agreement will be raised to 15% because County usage of the Center is typically around 35 to 40%. Small businesses located within the County are permitted to use the Center and pay for hazardous waste disposal independently. This Intergovernmental Agreement seeks to extend the arrangement between the City and the County.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Intergovernmental Agreement, the parties agree as follows:

1. City's Acceptance of Hazardous Wastes

The City agrees to accept hazardous wastes from Coconino County households and small businesses located within the County at the Center.

Hours of Operation. The County shall be responsible for informing its residents of the Center's hours of operation. Operational hours are Wednesdays and Fridays from 9:00 AM to 3:00 PM and Saturdays from 8:00 AM to 2:00 PM. Household hazardous waste will not be accepted outside the Center's designated hours of operation. The City shall have the right to modify the days and hours during which the Center will operate. The City shall immediately notify the County of any changes in the Center's hours of operation. Notwithstanding this subsection, the Center shall not operate on any official state holidays.

Residency. Households within the County using the Center will be required to show proof of residency within the County. Proof of residency or domicile within the County shall be shown by a valid Arizona Driver's License, state-issued identification card, or a current utility bill which reasonably substantiates current residence or domicile within the County.

Small businesses using the Center shall provide proof of business residency within the County by a verifiable business license issued by the County or a City within the County. In addition, small businesses must be qualified as a Conditionally Exempt Small Quantity Generator (CESQG) according to the United States Environmental Protection Agency. According to the Code of Federal Regulations (40 CFR 261.5), a CESQG is a generator (business owner) that meets the following criteria:

- 1) Generates less than 220 pounds of hazardous waste (defined by the Resources and Conservation Recovery Act {RCRA}) in a calendar month; and
- 2) Accumulates at any time or generates less than 2.2 pounds of acute hazardous waste in a calendar month (acute hazardous waste begins with an Environmental Protection Code of "P" or the following "F" codes F020, F021, F022, F026, and F027); and
- 3) Accumulates no more than 2,200 pounds of hazardous waste (defined by RCRA) at any one time.

Any businesses participating in the program are required to fill out a Generator Certification form stating the business is qualified as a CESQG.

2. Expenditures and Accounting

The County shall reimburse the City for 10% (Ten Percent) of the City's total labor costs incurred as a result of operating the Center. In addition, the County shall reimburse the City for a percentage of the Center's total operational expenses. Average County usage from 2011 will be used to bill the County for the first five months of the agreement which is 39%. Each year residential County usage will be re-calculated and the new usage percentage will be used for the subsequent year. The County's operational expense percentage shall be based on the ratio of Coconino County households that use the Center to the total number of households using the Center multiplied by total operational expenses (e.g. if thirty-nine County households use the Center and sixty-one non-County households use the Center, the County shall reimburse the City 39/100 or 39% of the City's total operational expenses). Operational expenses shall reflect the actual cost for the services provided including, but not limited to: transportation, disposal costs, containers, equipment rental, advertising and other expenses directly related to the Center's operation. The City shall submit to the County reports which include, but are not limited to, the number of County households that use the Center, total number of households using the Center, total labor costs and total operational expenses. The City shall provide reports generated pursuant to this section to the County on a quarterly basis including total amounts of hazardous waste generated. Said reports shall be submitted quarterly with an invoice.

Small businesses located within Coconino County that qualify as a CESQG using the Center shall pay a yearly registration fee in the amount of \$50.00 (Fifty Dollars) due when hazardous

waste is brought to the Center. The fee will be valid for one year after the date of payment. In addition, small businesses using the Center shall pay a disposal fee at the time of delivery. Disposal fees shall reflect the actual cost of disposal plus related operational expenses. Disposal fees for small businesses shall be posted on the City's website and made available at both the Center and Flagstaff City Hall.

3. Authority to Contract

Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder and has taken all required acts or actions necessary to authorize the same.

4. Notices

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Agreement will be in writing and sent to the address given below for the party to be notified, or to such other address notice of which is given in compliance with this Section 5:

If to the City:

Public Works Director
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

If to Coconino County:

Solid Waste Manager
Coconino County
Public Works Department
5600 E Commerce Avenue
Flagstaff, AZ 86004

5. Term

This Agreement shall be effective on the date first set forth above and shall continue in force and effect for a period of 2 years. This Agreement may be terminated by either party upon thirty (30) days written notice of termination delivered to the other party. This Agreement may be terminated by either party without penalty or further obligation, in accordance with the provisions of Arizona Revised Statutes §38-511.F, in the event of the occurrence of any of the circumstances described in A.R.S. §38-511.A.

6. Integration; Modification

Each of the Parties acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed herein, and that this Agreement constitutes the parties' entire agreement with respect to the matters addressed in the Agreement. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in the Agreement. This Agreement may be modified or amended only by written agreement executed by both of the parties and duly filed

with the Coconino County Recorder. Any such modification or amendment will become effective no earlier than the date of such filing.

7. Waiver

No failure to enforce any condition or covenant of the Agreement will imply or constitute a waiver of the right to insist upon performance of such condition or covenant, or of any other provision, nor will any waiver by either party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach.

8. Severability

In the event that a court of competent jurisdiction will hold any part or provision of this Agreement void or of no effect, the remaining provisions of the Agreement will remain in full force and effect to the extent that the continued enforcement of such remaining terms will continue to reflect substantially the intent of the parties.

9. Governing Law

This Agreement will be governed, interpreted and enforced in accordance with the laws of the State of Arizona.

10. Dispute Resolution

(a) Mediation. If a dispute arises out of or relates to this Agreement and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation will be self-administered and conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, New York 10017, (212) 949-6490, www.cpradr.org, with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This section does not constitute a waiver of the parties' right to arbitrate or initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona Rules of Civil Procedure.

(b) Litigation and Attorneys' Fees. Except as otherwise agreed by the parties, any litigation brought by either party against the other to enforce the provisions of this Agreement must be filed in the Coconino County Superior Court. In the event any action at law or in equity is instituted between the parties in connection with this Agreement, the prevailing party in the

action will be entitled to its costs including reasonable attorneys' fees and court costs from the non-prevailing party.

11. Non-discrimination

The parties agree to comply with Arizona Executive Order 99-4, prohibiting discrimination in employment by government contractors, to the extent applicable to this contract.

12. Cancellation for Conflict of Interest

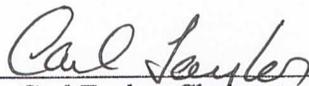
The parties agree that this contract may be cancelled for conflict of interest in accordance with A.R.S. § 38-511.

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

City of Flagstaff

Coconino County Board of Supervisors

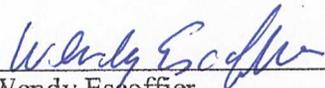
By: _____, Mayor


By: Carl Taylor, Chairman

Attest:

ATTEST:

City Clerk


Wendy Escoffier
Clerk of the Board

Approved as to form:

APPROVED AS TO FORM:

City Attorney


Deputy County Attorney