DELEGATION AGREEMENT

Between

Arizona Department of Environmental Quality

And

Gila County, hereinafter, County, a political subdivision of the State of Arizona, acting by and through the Gila County Community Development Division and Gila County Health and Community Services Division

Delegation Agreement # 06-0020

Whereas, A.R.S. § 49-107, authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, or county health department, any functions, powers, and duties, hereinafter, Functions and Duties, which the Director believes can be competently, efficiently, and properly performed by the local environmental agency, or county health department and

Whereas, the Gila County Community Development Division and Gila County Health and community Services Division are local environmental agencies or county health departments, hereinafter, LA, as set forth in A.R.S. § 49-107, and

Whereas, A.R.S. §§ 11-201(A)(3) and 11-952 authorize the County Board of Supervisors (and by delegation the LA, where the LA is a county environmental or health agency) to enter into contracts as necessary to assist LA in exercising its powers, and

Whereas, the LA deems that it is in its best interests to accept such delegation,

Therefore, the Director of ADEQ delegates to the LA, and the LA accepts the delegation of those Functions and Duties described in the Appendices of this Delegation Agreement, hereinafter Agreement, (Appendix A for Wastewater and Drinking Water Delegations, Appendix B for Solid Waste Delegations, Appendix C for Air Quality Delegations and Appendix D for Hazardous Waste Delegations) on behalf of ADEQ and in accordance with the terms and conditions specified in this Agreement.

A. DELEGATED FUNCTIONS AND DUTIES

The Functions and Duties that are delegated to the LA by this Agreement are identified in Sections A through N, and in Appendices A, B, C & D of this Agreement. ADEQ statutes, rules, policies and guidance shall be used in implementing the delegated Functions and Duties. The Functions and Duties not specifically delegated by this Agreement are retained by ADEQ.

B. STANDARDS OF PERFORMANCE

1. The standards of performance required of the LA to perform the delegated Functions and Duties and to fulfill the terms of this Agreement are those provided by statute and duly adopted rule, and are generally the same as those required of ADEQ personnel. The performance of the delegated Functions and Duties by the LA shall conform to ADEQ statutes, rules, policies and guidance. Program-specific standards of performance are identified in the Appendices of this Agreement.

2. ADEQ shall provide the LA with periodic training upon the request of the LA. LA personnel shall be invited to attend ADEQ internal compliance and enforcement training, which will be offered at least twice during a calendar year.

3. ADEQ shall provide operating guidance for use in implementing the terms of this Agreement concurrent with the execution of this Agreement. ADEQ will use its best efforts to provide the LA with new and/or updated guidance prior to or shortly after the effective date of the guidance. The guidance shall, at a minimum, include Engineering Bulletins, program guidance memoranda, substantive policy statements, copies of all applicable forms, policies and procedures, and other material that may assist the LA to carry out the delegated Functions and Duties specified in this Agreement. The LA may contact ADEQ for clarification or guidance on procedural or technical issues.

4. In the event of any dispute between the LA and a third party regarding the LA's interpretation or application of ADEQ statutes, rules, policies and guidance, ADEQ shall, if requested by the LA, provide timely assistance and direction to the LA.

C. FEE AUTHORITY & TYPES OF FEES

1. To the extent permitted by law, ADEQ delegates the authority to collect fees under its established fee rules to assure the LA may accomplish delegated Functions and Duties according to the applicable standards.

   The LA shall annually report delegated program authority fees to ADEQ on or before September 1. The report shall list all permits issued that year and the total revenue for each general permit category. ADEQ shall provide the LA with a template for the report. The report shall be delivered to ADEQ Central Office,

1110 West Washington Avenue, Phoenix, Arizona 85007, to the Office of the Chief Financial Officer.

Unless otherwise provided by statute, fees imposed by the LA shall be limited to the cost of service, including all direct and indirect costs.

2. Fees are authorized by, and shall conform to, the requirements of state laws and rules and county ordinances.

3. All fees collected by the LA pursuant to this Agreement shall be retained by the LA as consideration for performing the Functions and Duties described in this Agreement.

D. PERSONNEL QUALIFICATIONS

The required personnel qualifications for exercising each Program's delegated Functions and Duties are identified in the corresponding Appendix to this Agreement.

E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. The LA agrees to maintain records relating to its performance of the delegated Functions and Duties as specified in this Agreement, for a period of five years, from the date of expiration, or termination of this Agreement, or from the date of complete resolution any technical dispute, contested case, action against a party or any appealable agency action, whichever is longer, unless a longer period is required by statute or rule.

2. The LA agrees to create and submit reports related to its performance of the delegated Functions and Duties as specified in this Agreement. The reports shall be created and submitted to ADEQ in accordance with the specifications in the Appendices to this Agreement.

F. OVERSIGHT ACTIVITIES

1. ADEQ may accompany LA personnel on inspections and may review all records relating to the LA's performance of the delegated Functions and Duties as set forth in this Agreement. ADEQ shall provide prior notice to the LA of its intent to accompany LA employees on inspections. LA representatives may accompany ADEQ inspectors on inspections for purposes of training, information sharing or coordinating LA and ADEQ activities. The LA shall provide prior notice to ADEQ of its request to accompany ADEQ inspectors on inspections.

2. At least once during the term of this Agreement, ADEQ shall conduct an evaluation of the LA's performance of the delegated Functions and Duties. More frequent evaluations may be undertaken at the request of either party to this Agreement. The initial results of

all program evaluations shall be in writing and shall be communicated to the LA in a draft report. The LA is entitled to comment on the draft report. After ADEQ'S response to comments, ADEQ shall finalize the report and transmit a copy to the LA. The final reports of all program evaluations are public documents pursuant to A.R.S. § 39-121 *et seq*.

G. DELEGATION OF ENFORCEMENT AUTHORITIES; LOCAL AGENCY OBLIGATIONS

1. This Agreement is subject to the provisions of A.R.S. §§ 49-106.

2. As a supplement to any independent statutory authority an LA may hold, LA is hereby delegated the enforcement authorities pursuant to A.R.S. §§ 44-1307, 49-141 & 142, 49-261 & 262, 49-354 (A) & (B), 49-460 through 463, 49-781 through 783, 49-791, 49-922(B), 49-923 & 924, as applicable to the delegated Functions and Duties specified in this Agreement.

3. The LA shall be responsible for initiating timely and appropriate enforcement actions for alleged violations by individuals and facilities affected under this Agreement. The LA shall make compliance determinations and conduct enforcement actions in accordance with ADEQ's Compliance and Enforcement Handbook. The LA shall use inspection checklists and boilerplate documents provided by ADEQ or such documents that contain the same content as those documents provided by ADEQ.

4. ADEQ retains its authority to take an enforcement action against any individual or facility, the regulation of which, is specified in this Agreement. ADEQ may, at its discretion, refrain from exercising such authority if ADEQ determines that the enforcement action taken by the LA is timely, appropriate and effective. Except in a case involving an immediate threat to the public health, safety or environment, ADEQ shall give the LA 30 days prior written notice of its intent to initiate an enforcement action if the LA fails to initiate such enforcement action. In a case involving an immediate threat to the public health, safety or environment, ADEQ shall make its best efforts to notify the LA prior to its undertaking such an enforcement action.

5. Where appropriate, and if there is no conflict with applicable environmental laws and rules, LA may conduct enforcement action using the authority provided by A.R.S. Title 36 or A.R.S. Title 49, Chapter 3, Article 3. Nothing herein shall preclude LA from independently initiating enforcement action pursuant to its own authority under A.R.S. §§ 36-602 & 603, §§ 49-143 & 144, or any other civil or criminal statute or local ordinance, or from pursuing any other available legal or equitable remedy.

6. In those cases where the Attorney General has exclusive authority to bring an action to collect civil penalties, ADEQ shall timely notify the Attorney General of the LA's intent to initiate an enforcement action and such enforcement action shall be coordinated among the LA, ADEQ, the Attorney General and the LA's County Attorney.

7. Unless the LA has independent statutory enforcement authority, then in cases of civil enforcement, the LA and ADEQ shall coordinate litigation and settlements. The LA and ADEQ may act as co-plaintiffs in order to maximize resources.

8. Civil penalties assessed and collected under the authority of ADEQ's statutory enforcement authority shall be in the name of the State of Arizona, and shall be forwarded to ADEQ with copies of court documentation for deposit into the state general fund in accordance with Arizona Revised Statutes, Title 35, Article 3.

9. ADEQ may, with 30 days prior written notice to the LA, execute compliance initiatives directed at certain classes of violations or facilities that are alleged to be in violation of applicable statutes or rules. The LA agrees that, when such compliance initiatives involve facilities, the regulation of which has been delegated in by this Agreement, it will, to the best of its ability, cooperate in the successful execution of such compliance initiatives

H. APPEALS OF LOCAL AGENCY ACTIONS

1. Unless otherwise provided by statute, LA shall conduct administrative hearings for appeals of licensing decisions and enforcement actions taken by the LA under the delegated functions and duties of this Agreement in accordance with the A.R.S. Title 41, Chapter 6 Administrative Procedures, A.R.S. § 41-1092 *et seq.*, and the Office of Administrative Hearings, Rules of Procedure, A.A.C. R2-19-101 *et seq.* The LA shall use administrative law judges provided by the Office of Administrative Hearings (OAH). If an OAH administrative law judge conducts an administrative hearing under this Agreement, ADEQ shall pay for the LA's OAH hearing related costs. The LA or either the LA's County Attorney or counsel retained by LA shall may represent the LA at all administrative hearings. Nothing in this agreement mandates the LA contract for the services of administrative law judges with respect to administrative hearings involving matters arising from the LA's independent authority, functions and duties.

2. Pursuant to A.R.S. § 12-904, if the OAH grants or denies the relief requested, either the appellant or the LA may file, within 35 days after the decision, a complaint in superior court.

3. The LA shall provide ADEQ a report by July 31st of appeals filed and their final resolution during the previous calendar year.

I. LICENSING AUTHORITY

1. Except as provided under A.R.S. § 49-471.13, the LA agrees to comply with the overall time frames set forth in A.A.C. R18-1-525 when issuing licenses pursuant to delegated Functions and Duties under this Agreement. The LA shall provide a quarterly report to ADEQ indicating the number of licenses issued that quarter, by general type of license, and the number of licenses that exceeded the licensing time frame for the licensing decision. If the LA fails to meet a licensing time frame, the quarterly report shall indicate

the reason(s) why the licensing time frame was missed and the corrective action the LA has taken. If the LA demonstrates a pattern of failing to meet the required licensing time frames, ADEQ shall assist the LA in correcting the deficiencies in LA's licensing procedures.

2. The LA shall submit the quarterly reports described in subsection 1 of this Section to the ADEQ primary contact person designated in Appendices A through D.

J. LOCAL AGENCY INDEPENDENT AUTHORITY; SUBDELEGATION

1. ADEQ's delegation of Functions and Duties to a municipality within the LA's boundaries shall in no way infringe upon, reduce or usurp the LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.

2. The LA may not sub-delegate Functions and Duties delegated pursuant to this Agreement to another local government agency or political subdivision without obtaining the prior written approval of the Director of ADEQ.

3. ADEQ shall provide the LA a copy of any delegation agreement it has entered into with a municipality, located in whole or in part, within the LA's boundaries.

K. CONFLICT RESOLUTION PROCEDURES

The parties may resolve a conflict arising under this Agreement through arbitration. If the parties invoke this provision, the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

L. AMENDMENT AND TERMINATION PROCEDURES

1. Either party at any time may initiate a substantive amendment to this Agreement. An amendment to this Agreement shall be in writing, shall be executed by the Director of ADEQ, the Director of the LA, the Chairman of the LA's Board of Supervisors, the Clerk of the LA's Board of Supervisors and shall be approved as to form by the Attorney General and the LA's County Attorney. Amendments shall be filed with the Secretary of State Amendments shall be effective 30 days after written notice of ADEQ's final decision to amend this agreement

2. This Agreement may be terminated, in whole or in part, by either party upon providing 30 days prior written notice by certified mail to the other party and in compliance with subsection 3 of this section.

3. The LA shall, prior to the termination of all or part of this Agreement, forward to the ADEQ Director all files, public documents or pending applications received by the LA

those delegated Functions and Duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by the termination of this Agreement.

4. The cancellation provisions of A.R.S. § 38-511, the terms of which are hereby incorporated herein, shall apply to this Agreement.

M. TERM OF AGREEMENT

This Agreement is effective 30 days after written notice of ADEQ's decision to enter into this Agreement. The expiration date of this Agreement is June 30, 2011. If a new Agreement is not executed by that date, this Agreement may be extended by mutual agreement of both parties by filing an amendment in accordance with A.R.S. § 41-1081

N. NAME AND ADDRESS OF PRIMARY CONTACT PERSONS

ADEQ Edward M. Ranger
Administrative Counsel
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007
(602) 771-2212
emr@azdeq.gov

LA <u>For Appendix A and Appendix B, Item #1, Item #3-Sewage & Gray Water Nuisance Complaints</u>
Name: Jake Garrett, P.E.
Title: Wastewater Department Manager
Address: Gila County Community Development Division
714 S. Beeline Hwy, Ste 200
Payson, AZ 85541
Tel: (928) 474-7177 Fax: (928) 474-0802
jgarrett@co.gila.az.us

<u>For Appendix B, Item #2, Item #3-All Other Nuisance Complaints, Item #4</u>
Name: David J.H. Fletcher, R.S.
Title: Director
Address: Gila County Division of Health and Community Services
5515 S. Apache Ave., Ste 300
Globe, AZ 85501
Tel: (928) 402-8801 Fax: (928) 4250794
dfletcher@co.gila.az.us

The name of a successor to either of the above individuals shall not require the execution of an amendment to this Agreement.

Signature Page for
Gila County
Delegation Agreement # 06-0020

Arizona Department of Environmental Quality

11/9/07

Stephen A. Owens, Director Date

Gila County community Development Division
Wastewater Department

9/17/2007

Jake Garrett, Manager Date

Gila County
Division of Health and Community Services

9/23/07

David J.H. Fletcher, Director Date

Gila County Board of Supervisors

10-09-07

Jose M. Sanchez, Chairman Date

Attest:

10/9/07

Clerk of the Board Date

Pursuant to A.R.S. § 11-952(D), the foregoing Agreement has been reviewed by the undersigned attorneys for the County Community Development and the Arizona Department of Environmental Quality, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to their respective agencies.

10/2/07

County Attorney Date

10/31/07

Arizona Assistant Attorney General Date