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SERVICE AGREEMENT NO. 101013-1
ENVIRONMENTAL SERVICES
PURCHASE USED MOTOR OIL FROM GILA COUNTY LANDFILL

THIS AGREEMENT, made and entered into this 14TH day of OCTOBER, 2014, by and between Gila County a political subdivision of the State of Arizona, hereinafter designated the **County**, and Thermo Fluids, of the Town of Scottsdale, State of Arizona, hereinafter designated the **Contractor**.

WITNESSETH: The Contractor, for and in consideration of the sum to be paid by Thermo Fluids to the County, in the manner and at the time hereinafter provided, and of the other covenants and agreement's herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE 1 - SCOPE OF SERVICES: The Contractor shall provide for the complete provision in the scope of work below and shall do so in a good, workmanlike and substantial manner and to the satisfaction of the County under the direction of the Gila County Recycle and Landfill Management Manager or designee.

Scope of Work

Refer to attached Attachment "A" to Service Agreement No. 101013-1, by mention made a binding part of this agreement as set forth herein.

Contractor shall purchase and process the County's used motor oil from the Russell Gulch Landfill at 5891 E. Hope Lane in Globe, AZ. Contractor shall be responsible for providing suitable vehicles and equipment to transport the used products to Thermo Fluids facility. Contractor shall comply with applicable statutes, rules, regulations and ordinances of the United States Department of Transportation, as well as other federal, state local laws, and regulations in moving, handling and transportation of the product.

Contractor shall properly complete appropriate documentation for the transportation of used oil products, including, but not limited to: labeling, placarding, and manifesting. Contractor shall fully and accurately describe the date, transporter, and quantities of used oil picked up on a manifest, and its delivery to the Thermo Fluids facility shall be confirmed in writing to the County.

Payment

Rebate pricing from Thermo Fluids is to be based on the West Texas Intermediate-Cushing Index (WTI), per Attachment "A" to Service Agreement No. 101013-1, by mention made a binding part of this agreement as set forth herein, and will be updated monthly. All gallons will be paid by the 15th of the month following the month gallons were collected.

ARTICLE 2 – TERMINATION: The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work as directed in the notice. If the contract is terminated, the County shall be liable only for the services rendered under this contract and accepted material received by the County before the effective date of termination.

ARTICLE 3 - INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

ARTICLE 4 – INSURANCE REQUIREMENTS: Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**
   Policy shall include bodily injury, property damage and broad form contractual liability coverage.
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed to include the following additional insured language: **"The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".**

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Gila County Purchasing, 1400 E. Ash St., Globe, AZ, 85501** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Gila County Purchasing, 1400 E. Ash St., Globe, AZ, 85501**. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Contractor shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

ARTICLE 5 – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been

provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

ARTICLE 6 – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE 7 – CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. §38-511. If the Agreement is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

ARTICLE 8 – RELATIONSHIP OF THE PARTIES: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Contractor warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

ARTICLE 9 – NON-APPROPRIATIONS CLAUSE: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

ARTICLE 10 – ENTIRE CONTRACT CLAUSE: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect.

ARTICLE 11 – NON-WAIVER OF ENFORCEABILITY: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

ARTICLE 12 – GOVERNING LAW: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

ARTICLE 13– TERM: The term of the contract shall commence upon award and shall remain in effect for a period of twelve (12) months unless terminated, canceled or extended as otherwise provided herein. The Contractor agrees that Gila County shall have the right, at its sole option, to renew the contract for two (2) additional one (1) year periods. In the event the County exercises such a right, all terms, conditions and provisions of the original contract shall remain the same and apply during the renewal period.

ARTICLE 14 – PAYMENT: The Contractor shall pay to Gila County, the rebate pricing based on the West Texas Intermediate-Cushing Index, to be updated monthly. All gallons will be paid by the 15th of the month following the month gallons were collected.

IN WITNESS WHEREOF, Service Agreement No. 101013-1 *has been duly executed by the parties hereinabove named, on the date and year first above written.*

GILA COUNTY

Don E. McDaniel, Jr., County Manager

Date: 10/14/14

THERMO FLUIDS

Signature

LOOD J. BOGART
Chief Marketing Officer

THERMO FLUIDS
The Responsible Solution

July 1, 2014

Jeannie Sgroi
Gila County Finance Dept

RE: Proposal for Environmental Services

Thermo Fluids appreciates the chance to submit this proposal. This is a tremendous opportunity for both parties, as your locations reside within our strongest service area in the entire nation. Arizona is home to our largest TSD facility, and we have more resources in terms of people, trucks, and storage capacity than anywhere else in the country.

We hope that you will take advantage of the following:

- Superior Compliance - Our #1 EPA Compliance record (available to at www.epa-echo.org) – this protects your business and should give you piece of mind that we are *The Responsible Solution.*
- Financial Protection - We are a publicly traded company, and our insurance is well more than twice the minimum necessary insurance coverage to protect your company.
- Service Quality – We understand our customers are the most important part of our business and work extremely hard to exceed expectations and build true long-term partnerships. Our customers have collectively scored Thermo Fluids an average score of 9.24 out of 10.

USED OIL PRICING
The pricing below is your "jump off" price ($0.70/gallon) for your used oil rebate. This pricing is based on the West Texas Intermediate-Cushing Index and will be updated monthly, and all gallons paid the 15th of the month following the month gallons were collected.

Proposal Prepared Exclusively For: Gila County

Used Oil Collection (Max. 5% Water): **$0.65 / Gal**

- Price to be indexed and based on WTI November 2013 Index

Calculation of Market Pricing to Gila County.

1) **Determine the WTI Cushing, OK monthly average of crude oil on www.eia.gov/dnav/pet/pet_pri_spt_s1_m.htm and obtain the previous months WTI for the month you would like to determine the price you will be paid. Example; to determine what you will be paid for oil picked up in the month of November 2013 obtain the WTI for October 2013.**

THERMO FLUIDS
The Responsible Solution

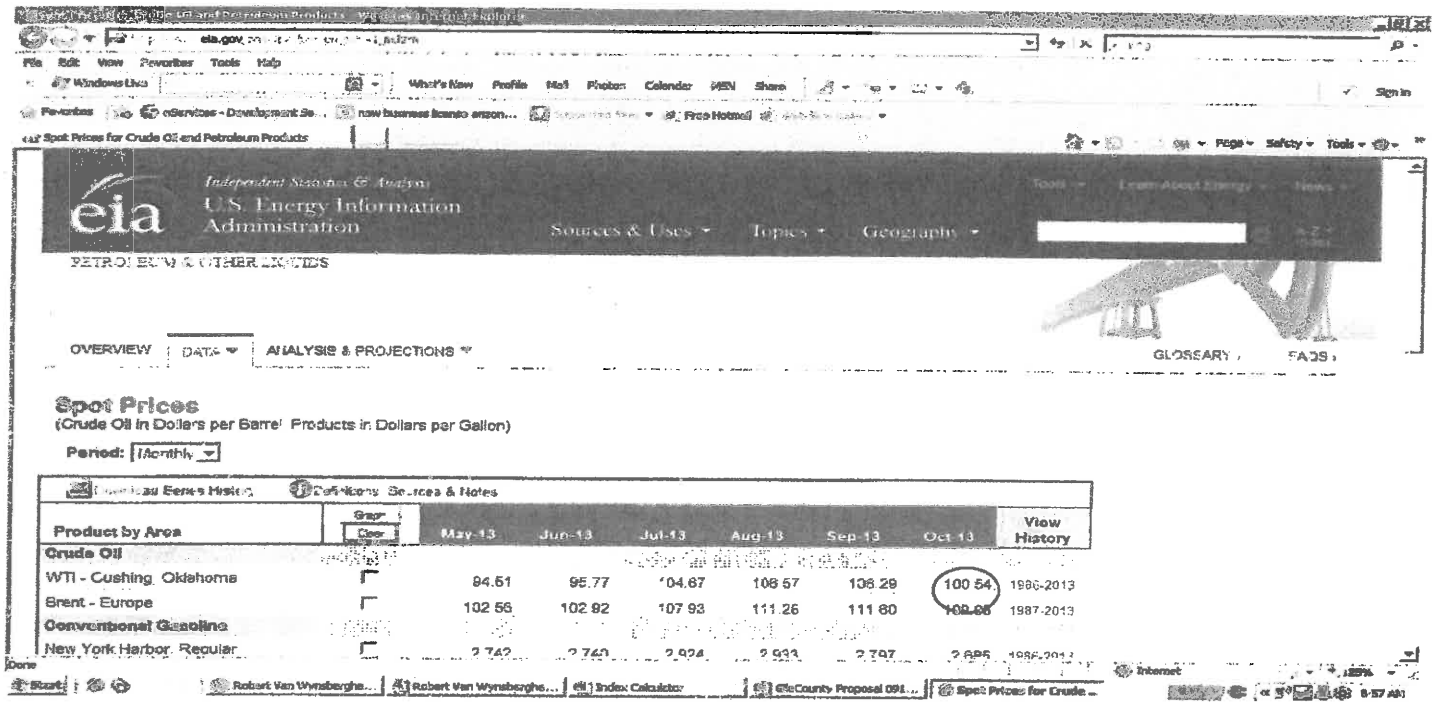
In this example the monthly average for the previous month (October) to determine what Gila County will be paid for Used OIL picked up in the month of November is 100.54 (see table below).

Then Calculate using the following;

WTI / 42 (gallons per barrel crude oil) x index = Price paid for crude oil.

100.54 / 42 x .2715 (27.15%) = $0.65/gallon paid for used oil collected in the month of November 2013.

The index above of .2715 or 27.15%, once determined, will stay constant for Gila County through the ups and down of the market. The index, will be determined when the agreement is fully executed so Gila County will start at the price originally quoted of $0.65/gallon. If executed in the month of November 2013 the index for Gila County will be 27.15%.



Thank you for the opportunity to serve your environmental needs.

Sincerely;
Robert Van Wynsberghe
602-768-0130

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