

**INTERGOVERNMENTAL AGREEMENT BETWEEN
CITY OF APACHE JUNCTION AND THE TOWN OF EAGAR FOR
TRANSFER OF USED EQUIPMENT**

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation (hereinafter referred to as "Apache Junction"), and the TOWN OF EAGAR, ARIZONA, an incorporated Arizona Town (hereinafter referred to as "Eagar"), both of which are referred to collectively as the "Parties" or individually as a "Party".

RECITALS

- A. Apache Junction is in possession of a used heavy duty Case 570MXT construction grade box tractor scraper serial number JJG0380967 (the "Equipment").
- B. Eagar is in need of this Equipment for its local public works functions.
- C. Apache Junction has the desire and the ability to assist Eagar.
- D. Mutual cooperation would result in Eagar's obtaining equipment from Apache Junction, and Apache Junction would avoid the additional expenditure of public funds for disposing of the Equipment by directly relinquishing ownership to Eagar.
- E. This Intergovernmental Agreement ("IGA") will promote efficiency in the use of public funds and will encourage future cooperation between both public entities.
- F. Pursuant to Arizona Revised Statutes Annotated ("A.R.S.") § 11-951 *et seq.*, the Parties are authorized to enter into intergovernmental agreements for the purposes of sharing used equipment.

AGREEMENT

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 to this Agreement agree as follows:

1. Apache Junction's Obligations

- A. Within 30 calendar days after execution of this IGA, provide Equipment to Eagar at Apache Junction's Public Works Department located at 575 E Baseline Ave, Apache Junction, AZ 85119.

2. Eagar's Obligations

- A. Take possession of Equipment at the Apache Junction Public Works Department.**
- B. No later than 30 calendar days after receipt of the Equipment, remove or cause to remove all "Apache Junction" insignias, seals and other markings on Equipment, replace with "Town of Eagar" decal/insignias, or other markings clearly indicating that such Equipment is a town fleet vehicle and is to be used exclusively for local public works projects. Allow inspection of the Equipment after delivery to Eagar and provide visual proof of complying with this section.**
- C. Provide accounting of received Equipment to Apache Junction at the time of receipt of any transferred equipment.**

2. Indemnification and Insurance. To the extent permitted by law, Eagar covenants and agrees to fully indemnify, hold harmless and defend Apache Junction and its mayor and city council, 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, except to the extent such claims or suits arise out of or are based upon acts or omissions by Apache Junction or its mayor and city council, officers, employees or agents. If any action or claim shall be brought or asserted against Apache Junction or its mayor and city council, officers, agents, servants or employees for which indemnity may be sought from Eagar, then Apache Junction, or any such person, shall promptly notify Eagar in writing. Eagar shall, within ten (10) working days of receiving such notice, assume the defense thereof, and the payment of all expenses, including any attorney fees and all court costs that 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 the part of Eagar, its mayor and city council, officers, employees and agents. It is understood and agreed that Eagar may elect to self-insure or obtain insurance through its pooling agreement with other governmental entities against any or all of the risks related to this Agreement. Eagar shall provide Apache Junction with a current insurance certificate or other evidence of coverage as appropriate, Eagar shall also deliver to Apache Junction upon execution of this Agreement a statement from its insurance company that Apache Junction, its mayor and city council, officers, agents, and employees are additional insured parties. This section shall survive the expiration or early termination of this Agreement. Apache Junction does not make any warrant as to the operability of the Equipment and makes the transfer in its "AS-IS" condition.

3. Duration of Agreement/Termination. This Agreement shall be valid upon execution and shall continue for a term of one (1) year.

4. Binding Effect. 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 Party. 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.

5. Entire Agreement. This Agreement and any attachments represent the entire agreement between Apache Junction and Eagar 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 supporting documents, 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.

6. Severability. Apache Junction and Eagar 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 Apache Junction 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.

7. 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, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or for

removal to federal court. 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: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action

8. Notices. All notices and insurance certificates required under this Agreement shall be sent as follows:

If to Apache Junction: Shane Kiesow, Public Works Manager
City of Apache Junction
575 E Baseline Ave.
Apache Junction, AZ 85119

If to Eagar: Daniel Craig, Public Works Director
22 W 2nd Street
Eagar, AZ 85925

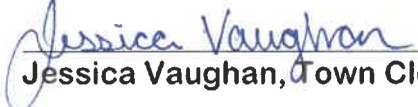
9. Conflicts of Interest This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

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

TOWN OF EAGAR, an incorporated Arizona
Town

By: 
Steve Erhart, Mayor

ATTEST:


Jessica Vaughan, Town Clerk

CITY OF APACHE JUNCTION,
ARIZONA, an Arizona municipal
corporation

By: _____
Walter "Chip" Wilson, Mayor

ATTEST:

Jennifer Pena, City Clerk

COUNSEL APPROVAL AS TO FORM:

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.


Brett R. Rigg, Eagar Town Attorney

12-12-2022
Date

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

Richard J. Stern, Apache Junction City Attorney

Date