ATTACHMENT A

INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF CITY OF APACHE JUNCTION USED LAW ENFORCEMENT VEHICLE AND EQUIPMENT TO THE TOWN OF SUPERIOR

THIS AGREEMENT is made and entered into this _____ day of _____, 2016, by and between **THE CITY OF APACHE JUNCTION, ARIZONA**, an Arizona municipal corporation (hereinafter referred to as "Apache Junction"), and the **TOWN OF SUPERIOR, ARIZONA**, an incorporated Arizona Town (hereinafter referred to as "Superior"), 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 armored tactical vehicle (the "vehicle") and miscellaneous equipment.

B. Superior is in need of this vehicle and used equipment for law enforcement functions.

C. Apache Junction has the desire and the ability to assist Superior.

D. Mutual cooperation would result in Superior's obtaining a vehicle and law enforcement equipment from Apache Junction, and Apache Junction would avoid the additional expenditure of public funds for disposing of the vehicle and equipment by directly relinquishing ownership to Superior.

E. There is a need for mutual cooperation between Apache Junction and Superior in law enforcement issues.

F. This Intergovernmental Agreement ("IGA") will promote efficiency in the use of public funds and will encourage future cooperation between both public entities.

G. 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 exchanging property and taking joint or cooperative action.

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.   **Superior's Obligations**

A.   Accept vehicle ownership transfer documents from Apache Junction, forward to the Arizona Department of Transportation, Motor Vehicle Division ("MVD"), and provide conformed copies to Apache Junction.

B.   Pick up any offered equipment at the Apache Junction Police Department and transport it to Superior. Such "equipment" is defined as any weapons, officer safety equipment and other miscellaneous used law enforcement equipment.

C.   No later than 30 days after receipt of the vehicle and equipment, remove or cause to remove all "Apache Junction Police Department" insignias, seals and other markings on used vehicle, replace with "Town of Superior Police Department" decal/insignias, or other markings clearly indicating that such vehicle is a law enforcement vehicle and is to be used exclusively for law enforcement purposes. Allow Apache Junction to inspect the vehicle after delivery to Superior and provide visual proof of complying with this section.

D.   Provide accounting of received equipment to Apache Junction at the time of receipt of any transferred equipment.

2.   **Apache Junction's Obligations**

A.   Execute the appropriate MVD change of ownership/transfer documents, and provide original copies to Superior for the vehicle.

3.   **Indemnification and Insurance**. To the extent permitted by law, Superior 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 Superior, then Apache Junction, or any such person, shall promptly notify Superior in writing. Superior 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 Superior, its mayor and city council, officers, employees and agents. It is understood and agreed that Superior 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. Superior shall provide Apache Junction with a current insurance certificate or other evidence of coverage as appropriate, Superior 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.

4.   Duration of Agreement/Termination. This Agreement shall be valid upon execution and shall continue for a term of one (1) year, but shall automatically renew for ten (10) years unless either Party terminates this Agreement for any reason upon sixty (60) days' written notice to the other Party by overnight delivery service or first class certified mail, postage prepaid, addressed to the other Party as set forth in Section 9 of this Agreement.

5.   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 assigns 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.

6.   Entire Agreement. This Agreement and any attachments represent the entire agreement between Apache Junction and Superior 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.

7.   Severability. Apache Junction and Superior each believe that the execution, delivery and performance of this Agreement are in compliance with

3

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.

8. <u>Governing Law, Venue and Attorney Fees</u>. 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

9. <u>Notices</u>. All notices and insurance certificates required under this Agreement shall be sent as follows:

If to Apache Junction: Thomas Kelly, Public Safety Director
                            City of Apache Junction Police Department
                            300 E. Superstition Blvd.
                            Apache Junction, AZ 85119

If to Superior: David Neuss, Police Chief
                            P.O. Box 218
                            Superior, AZ 85173

10. <u>Conflicts of Interest</u> 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 SUPERIOR, an incorporated Arizona Town

By: _____

    Jayme Valenzuela, Mayor

ATTEST:

_____

_____, Town Clerk

THE CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation

By: _____

    John Insalaco, Mayor

ATTEST:

_____

Kathleen Connelly, 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.

_____   _____
Stephen R. Cooper, Superior Town Attorney   **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**