

ADOT CAR No.: IGA 19-007361-I  
AG Contract No.: P001 00xxxx  
Project Location/Name: PM-10 Certified  
Street Sweepers  
Type of Work: Procurement  
**Federal-aid No.:**  
**ADOT Project No.: TBD**  
**TIP/STIP No.: N/A**  
**CFDA No.: 20.205 - Highway Planning  
and Construction**  
**Budget Source Item No.:**

## **INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF APACHE JUNCTION

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF APACHE JUNCTION, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties" or individually as "Party."

### **I. RECITALS**

1. The State is empowered by A.R.S. § 28-401(B) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by A.R.S. § 48-572 (B)(1) to enter into this Agreement and has by resolution, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The Maricopa Association of Governments ("MAG") Regional Council approved the Prioritized List of Proposed PM-10 Certified Street Sweeper Projects for FY 2019 CMAQ Funding on November 28, 2018. The MAG Transportation Improvement Program ("TIP") has programmed Congestion Mitigation and Air Quality ("CMAQ") federal funds available to the City for the procurement of PM-10 Certified Street Sweepers ("Street Sweeper(s)"). A PM-10 Certified Street Sweeper is a street sweeper that is certified by the South Coast Air Quality Management District ("SCAQMD") as meeting SCAQMD Rule 1186 certification standards.
4. The purpose of this Agreement is to allow the City to utilize contract(s) solicited and established by ADOT Procurement for the purchase, payment to the supplier by the City, and reimbursement of PM-10 Certified Street Sweeper(s).

**THEREFORE**, in consideration of the mutual terms expressed in this Agreement, it is agreed as follows:

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## **II. SCOPE OF WORK**

1. The Parties agree:
  - a. After funding is authorized, MAG will send a notice to proceed letter ("NTP") and ADOT Procurement will solicit and enter into a contract(s) with authorized supplier(s) for the purchase of Street Sweeper(s). The City will utilize ADOT's Procurement process and resultant contract(s) as developed and entered into for the procurement of the Street Sweeper(s) and issue a purchase order to the authorized supplier.
  - b. The City will make all payments directly to the vendor, and be responsible for all costs incurred for the purchase of the Street Sweeper(s).
  - c. Within 30 calendar days after payment for the Street Sweeper(s), the City will submit an invoice, including all back-up documentation, to MAG for review and approval, of eligible costs incurred by the City for the purchase of the Street Sweeper(s) at a cost not yet determined but will not exceed the federal funds programmed and approved in the amount of \$239,388.00. Any costs incurred prior to the date of the official Notice to Proceed will not be eligible for reimbursement.
  - d. Within 30 calendar days after receipt of the MAG approved invoice, the State will reimburse the City for the federal funds programmed and approved for the procurement of the Street Sweeper(s).
  - e. The City will procure the Street Sweeper(s) and request reimbursement within one year after the date of the MAG NTP letter, reimbursements must be completed by June 30<sup>th</sup>, 2020.
  - f. To comply with the ADOT Federal Property Management Standards for the Street Sweeper(s) purchased.
  - g. The City shall maintain and operate the Street Sweeper(s) for its useful life and contact MAG prior to disposal. Within 30 calendar days after disposal of the Street Sweeper(s) return the federal share of the proceeds to ADOT.
  - h. The City will comply with applicable requirements prescribed by MAG with respect to Street Sweeper(s) and related activities.

## **III. MISCELLANEOUS PROVISIONS**

1. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until all related purchases and reimbursements are complete. Any provisions for maintenance shall be the responsibility of the City for the useful life of the Street Sweeper(s) and in compliance with the ADOT Federal Property Management Standards, as specified above in Section II.
3. This Agreement may be cancelled after 30 calendar days written notice to the other Parties. It is understood and agreed that, in the event the City terminates this Agreement, the City shall be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the City terminates this Agreement, the State shall in no way be obligated to procure or maintain records or documentation associated with the Street Sweeper(s).
4. The City shall indemnify, defend, and hold harmless the State, any of its departments, agencies, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the City, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The City's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the City which may be legally imputed to the State by virtue of the State's ownership or possession of land. The City's obligations under this paragraph shall survive the termination of this Agreement.
5. The cost under this Agreement is to be covered by programmed federal funds, up to the maximum available. The City acknowledges that actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the City agrees to pay the difference between actual costs and the federal funds received.
6. Should the federal funding be terminated or reduced by the federal government, or Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this Agreement.
7. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.
8. The City acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
9. The City acknowledges compliance with federal laws and regulations and may be subject to the CODE OF FEDERAL REGULATIONS, TITLE 2, PART 200 (also known as "The Uniform

Grant Guidance"). Entities that expend \$750,000.00 or more (on or after 12/26/14) of federal assistance (federal funds, federal grants, or federal awards) are required to comply by having an independent audit in accordance with § 200.331 Subpart F. Either an electronic or hardcopy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine months of the sub recipient fiscal year end.

ADOT – FMS

Attn: Cost Accounting Administrator

206 S 17<sup>th</sup> Ave. Mail Drop 204B

Phoenix, AZ 85007

[SingleAudit@azdot.gov](mailto:SingleAudit@azdot.gov)

10. This Agreement shall be governed by and construed in accordance with Arizona laws.
11. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
12. The City shall retain all books, accounts, reports, files and other records relating to the Agreement for five years after completion of the reimbursement. These documents shall be subject at all reasonable times to inspection and audit by the State. Such records shall be produced by the City at the request of ADOT.
13. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding "Non-Discrimination."
14. Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.
15. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
16. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
17. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. § 35-393.01.<sup>1</sup>
18. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

<sup>1</sup> In *Jordahl v. Brnovich et al.*, Case No. 3:17-cv-08263 (D. Ariz.), the U.S. District Court entered a preliminary injunction that enjoins the State from enforcing A.R.S. § 35-393.01(A) (the "Anti-Israel Boycott Provision"). That statute states that: "[a] public entity may not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction unless the contract includes a written certification that the company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel." Unless and until the District Court's injunction in *Jordahl* is stayed or lifted, the Anti-Israel Boycott Provision (A.R.S. § 35-393.01(A)) is unenforceable and the State will take no action to enforce it.

19. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

**For Agreement Administration:**

Arizona Department of Transportation  
Joint Project Agreement Section  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)

City of Apache Junction  
Attn: Public Works Director  
575 E. Baseline Ave.  
Apache Junction, AZ 85119  
Phone # 480.474.8516  
Fax #480.983.5752

**For Project Administration:**

Arizona Department of Transportation  
Local Public Agency Section  
205 S. 17<sup>th</sup> Avenue, Suite 291  
Phoenix, AZ 85007  
[LocalPublicAgencySection@azdot.gov](mailto:LocalPublicAgencySection@azdot.gov)

**For Financial Administration:**

Arizona Department of Transportation  
Local Public Agency Section  
205 S. 17<sup>th</sup> Avenue, Mail Drop 6XXE  
Phoenix, AZ 85007  
[LocalPublicAgencySection@azdot.gov](mailto:LocalPublicAgencySection@azdot.gov)

20. In accordance with A.R.S. § 11-952 (D), attached and incorporated in this Agreement is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

**CITY OF APACHE JUNCTION**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
**JEFF SERDY**  
Mayor

By \_\_\_\_\_  
**STEVE BOSCHEN, PE**  
Division Director

ATTEST:

By \_\_\_\_\_  
**KATHY CONNELLY**  
City Clerk

**ATTORNEY APPROVAL FORM FOR THE CITY OF APACHE JUNCTION**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF APACHE JUNCTION, an agreement between public agencies which, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
City Attorney