

VII. SPECIAL TERMS AND CONDITIONS

A. By applying for an AZ SMART award pursuant to this RFGAA, Applicants understand and agree to all of the following:

1. **Conflicts of Provisions.** In the event of an internal conflict between any term, condition, or provision in this RFGAA, the following shall prevail in the order listed below
 - a. ARS §28-339
 - b. Definitions
 - c. Special Terms and Conditions
 - d. Standard Terms and Conditions
 - e. Specifications
2. **Administrative Completeness.** Only Administratively Complete applications will receive a Courtesy Technical Review, be evaluated and be presented to PPAC or the Board.
3. **Funding from another source.** An Applicant awarded AZ SMART funds that later receives funding from another source for the same purpose in an amount equal to or greater than that awarded by AZ SMART shall:
 - a. Notify ADOT via email to azsmart@azdot.gov that the Applicant has received other funding within 10 days of the announcement or notification of award of such funds. Upon receipt of the notification, the Board shall rescind the award (ARS §28-339.P).
 - b. Repay any AZ SMART Funds which have been reimbursed to the Applicant or expended by ADOT on the Applicant's behalf within 1 year of the date of the rescission resolution approved by the Board. ADOT will invoice the Applicant upon determining the amount due (ARS §28-339.P).

4. **Project Development Administration (“PDA”) Fees.** All Projects administered by ADOT shall be subject to PDA fees. PDA Fees are eligible expenditures for AZ SMART provided they are included in the Project Budget submitted by the Applicant. ADOT will invoice Applicants for an initial amount of \$30,000. Applicants understand additional PDA funds may be required, particularly for complex projects or those which are not well-developed and agree to pay such funds within 30 days of receipt by ADOT.
5. **Applicant Responsible for All Costs.** Applicants are responsible for all costs which exceed the amount of an AZ SMART Fund or Federal Grant award, including cost increases due to inflation, underestimating, unforeseen conditions, increase in cost of materials, and any other increase.
6. **Award is not a Notice to Proceed.** Board approval and execution of this RFGAA is not a Notice to Proceed (NTP) and does not constitute permission to begin work. For road or bridge projects, the Applicant must request and receive Funding Authorization and a NTP, as applicable, from the ADOT Project Manager (“PM”) for each project phase in advance of the start of work. For transit or rail projects, AZ SMART funds must be authorized by ADOT prior to the start of work.
7. **Project Scope, Schedule, and Budget.** The Applicant is responsible for developing its own Project Scope, Project Schedule and Project Budget cost estimates, hiring any necessary experts and conducting its own Federal Grant research. ADOT provides Courtesy Technical Reviews and information on the [AZ SMART website](#), verbally or in meetings or webinars about Federal Grants and tools to develop project scope, schedule and budget. The review, information and tools are provided as a courtesy only and do not purport to be complete or sufficient for every Project.

8. **Limited Funding.** Funding in one or more categories may be insufficient and the Board may modify the amount awarded to one or more Applicants. Neither ADOT nor the Board will bear any responsibility for an award that is less than the amount requested. Applicant receiving a modified award may re-apply for the same purpose if funding becomes available at a later time. Subsequent applications for the same Project and same Eligible Use will require a new Application to be submitted during an open RFGAA solicitation and will be scored and ranked based on the Priority Criteria in effect at the time.
9. **Supplanting Committed Funding for Federal Grants.** Applicants are required to commit matching funds for a Federal Grant in a Federal Grant application. AZ SMART Applicants that have already applied for or received a Federal Grant understand the Board may prioritize applications which supplant funding lower than those for future Federal Grant applications.
10. **Readiness to Proceed.** Applicants must be ready to proceed with the Eligible Use(s) within 60 days after Board approval of funding. Neither ADOT nor the Board will bear any responsibility if an Applicant fails to meet a deadline due to not being ready to proceed with the Eligible Use(s) for which the funding is awarded.
11. **Delay of Awards.** By applying for an AZ SMART grant, Applicants understand that a request for more information by the Board may delay Board approval to a subsequent Board meeting.
12. **Right of Way.** The Applicant hereby certifies:
 - a. All necessary rights of way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right of way, or will be removed prior to the start of construction, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT Right of Way Procedures Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.06 Monitoring Process and 9.07 Certification of Compliance. Coordinate with the appropriate State's Right of Way personnel during any right of way process performed by the Applicant, if applicable.
 - b. It has adequate resources to discharge the Applicant's real property related responsibilities and ensures that its Title 23-funded projects are carried out using the FHWA approved and certified ADOT Right of Way Procedures Manual and that it will comply with current FHWA requirements whether or not the requirements are included in the FHWA approved ADOT Right of Way Procedures Manual (23 CFR 710.201). Additionally, the Applicant certifies that all real estate related activities requiring licensure are performed by licensed individuals as defined by the Arizona Department of Real Estate (A.R.S. §§ 32-2121 & 32-2122).
 - c. It will not permit or allow any encroachments on or private use of the right of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Applicant shall take all necessary steps to remove or prevent any such encroachment or use. The Applicant shall provide a copy of encroachment permits issued within the Project limits to the State.

- d. It will automatically grant to the State, by execution of this RFGAA, its agents and/or contractors, without cost, the temporary right to enter the Applicant's rights of way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Applicant's rights of way. This temporary right will expire with completion of the Project.
13. **Utilities and Railroads.** The Applicant shall investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve a location within the final right of way to re-establish the prior rights location for those utilities with prior rights.
14. **Applying for Projects on ADOT routes.** Applicants pursuing Projects that are not in the current Five-Year programmed are hereby notified:
- a. Projects programmed on ADOT's system in the Five-Year Construction Program have been scored, prioritized as required by ARS §28-6951, and programmed based on the Planning to Programming ("P2P") process.
 - b. An AZ SMART award may not result in the advancement of a Project that is not in the current Five-Year Construction Program, will not be ready to proceed within 2 years, or supplants the prioritization required by law.
 - c. Applicants for Projects on ADOT's routes will be solely responsible for the costs of all phases of the Project which exceed the amount awarded from AZ SMART or a Federal Grant. Applicants are solely responsible for applying for an appropriate Federal Grant as required under this RFGAA.
 - d. Unless otherwise determined, ADOT will administer design, right of way, construction and all other phases of Projects on ADOT routes, even if the NOFO/NOFA allows a Direct Recipient option.
 - e. PDA and construction administration fees will apply and shall be paid by the Applicant within 30 days of receipt of an invoice from ADOT.
15. **Information to Determine Eligibility.** The Applicant is solely responsible for providing clear and concise information sufficient to enable ADOT to determine if the Project meets the requirements of the current NOFO/NOFA or the federal statutes establishing the Federal Grant. Neither ADOT nor the Board shall bear any responsibility for decisions made based on the information provided by the Applicant.
16. **Determination of Eligibility.** A determination of eligibility of an Applicant or Project for AZ SMART does not mean the applicable federal agency will agree with such determination for a Federal Grant. Neither ADOT nor the Board will be responsible if a Project or Applicant are later determined to be ineligible for the selected Federal Grant. If an Applicant awarded DOES funds does not submit a Federal Grant application, the Board is required to rescind the award and the Applicant is required to repay any DOES expenditures within 30 days of receipt of an invoice from ADOT.

17. **One Project and one Federal Grant.** Each AZ SMART Fund application shall address only one specific Project and one Federal Grant to be pursued for that Project.
18. **Additional applications.** Applicants may submit more than one Project for AZ SMART. Each Project requires the completion and submission of a separate AZ SMART Fund application, governing body resolution and COG/MPO approval.
19. **More than one Eligible Use.** Applicants may request funding for more than one Eligible Use in a single application provide all Eligible Uses are related to the same Project and the same Federal Grant. DOES and Match requests shall meet Federal Standards.
20. **No Other Use Allowed.** An AZ SMART Fund award may not be used for purposes, projects or Federal Grants other than those identified in the AZ SMART Fund application approved by the Board.
21. **Applicant Vendors.** Consultant(s), contractor(s) and service provider(s) hired by the Applicant prior to receiving an AZ SMART award must be on contract to ADOT or selected in a competitive procurement by ADOT to continue work on the Project. Being on ADOT contract does not guarantee selection.
22. **Allowable Project Changes.** Changes to Project work types, materials, methods, delivery methods, length, and other changes which vary from the Project Scope submitted in the Application are acceptable, provided the Project continues to address the Purpose and Need identified in the Application. Allowable Project changes shall comply with the following:
 - a. Applicants shall bear all costs associated with allowable Project changes, including materials costs, contract penalties, and any other costs.
 - b. A Change in Scope will invalidate the AZ SMART award. The Board will rescind the award and the Applicant will repay any AZ SMART Funds expended to date within 30 days of receipt of an invoice from ADOT. Any remaining AZ SMART Funds will be returned to the applicable Funding Category.
23. **Federal Grant Agreement Changes.** Changes in a Federal Grant Agreement for a Project awarded match from AZ SMART may require an amendment to this RFGAA or require further approval by the Board and/or Applicant's governing body depending on the magnitude of the change. Direct Recipients for a Federal Grant shall provide any changes to the Federal Grant Agreement to ADOT prior to the execution of documentation approving such change.
24. **Applicant Names Posted Online.** Pursuant to ARS §41-2702.E, the name of each Applicant shall be publicly read, recorded and posted on the [AZ SMART website](#). All other information in the grant application is confidential during the process of evaluation. All applications shall be open for public inspection after the evaluation process, with the exception of Confidential Information.

25. **Confidential Information.** To the extent an Applicant designates and the State concurs, trade secrets and other proprietary information contained in the Application shall remain confidential. The Applicant shall clearly identify any trade secrets or other proprietary information which is to remain confidential by stamping or marking the pages/information with "**CONFIDENTIAL**" in bold capital letters.
26. **Inactive Funding.** All Projects receiving AZ SMART awards are subject to ADOT policy FIN-8.01, regarding timely obligation and expenditure of funds. Direct Recipients and Applicants approved by ADOT to self-administer a Project shall request Reimbursement at least quarterly but not more than monthly to ensure the AZ SMART funding is deployed in a timely manner for the benefit of the transportation system.
27. **Applicant participation required.** The Applicant shall be an active participant in the development and/or construction of the Project. ADOT administration does not relieve the Applicant from actively participating in meetings, reviewing and commenting on documents or any other actions or responsibilities of a sponsoring entity related to the Project.
28. **Changes or Exceptions.** Any change proposed to this RFGAA from the original contents or exceptions to terms and conditions shall be identified and submitted with the Applicant's Proposal. Changes are subject to approval by ADOT and are not guaranteed.
29. **Application Closure by the Board.** The Board may direct ADOT to close applications for any Funding Category if the Board determines funding is insufficient. Unawarded applications will be returned to the Applicants (ARS §28-399.O).
30. **Accuracy of data, information and documents.** Applicants are solely responsible for the accuracy of any data, information and documents included in the Application. Neither ADOT nor the Board shall bear any responsibility for decisions made based on such data, information and documents.
31. **Questions and Answers webpage.** All questions regarding the RFGAA, including requests for clarifications, questions about application information, proposal process, etc., shall be in writing and submitted to azsmart@azdot.gov at least 10 business days before the Application Deadline. No letters, telephone calls or emails submitted to any other email address will be addressed. Amendments, clarifications or other information related to this RFGAA will be posted on the Questions and Answers page on the [AZ SMART website](#). The Authorized Representative is required to certify he/she has read and understands this information in the Offer and Acceptance form.
32. **Inspection.** All Projects receiving AZ SMART Fund awards are subject to inspection.

B. Tribal Provisions

The following terms and conditions relate only to federal recognized Indian Tribal Applicants.

1. **Limited Waiver of Sovereign Immunity.** For purposes of this RFGAA, and subject to the terms of this section, a Tribal Applicant consents and agrees to a limited waiver of its sovereign immunity from suit and consents to be sued on an arbitration award. The Tribal Applicant represents that this limited waiver of sovereign immunity has been duly approved by the Applicant's Tribal Council, as authorized by the Arbitration and

Sovereign Immunity Acts of the applicable Tribe. The Tribal Applicant is not waiving its right to assert the defense of sovereign immunity except as expressly set forth, referred to, and provided for, in this RFGAA. This limited waiver is enforceable solely by the State as limited hereunder and does not create any additional third-party beneficiary rights to suits or private causes of action in favor of third parties. This section provides a limited waiver of sovereign immunity solely for the purpose of enforcing the provisions of this RFGAA and enforcing any arbitration award hereunder and for no other purpose.

2. **Dispute Resolution.** In the event of a dispute, claim or controversy (“Dispute”) arising out of or related to this RFGAA, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute. In the event the Parties cannot resolve their Dispute informally after attempting to work in good faith, the Parties hereto agree to abide by arbitration as set forth below and that an order compelling arbitration or a judgement enforcing the arbitration award shall be the only relief of any kind provided by the State or Tribal court.
3. **Arbitration.** If a party in good faith concludes that a Dispute arising out of or related to this RFGAA is not likely to be resolved by informal dispute resolution then, upon notice by that Party to the other, said Dispute shall be finally and exclusively settled by submission of such Dispute to the American Arbitration Association (“AAA”) under its then prevailing procedural rules contained in the AAA’s Commercial Arbitration Rules to the extent that such rules shall not be interpreted to diminish, limit, or void the limited waiver of sovereign immunity set forth in Section 14 above or to increase the enforcement rights of the Parties. Within 10 days after the notice of intent to arbitrate, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least 10 years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators shall be knowledgeable with federal Indian law and one arbitrator shall have AAA-acknowledged expertise in the appropriate subject matter. By agreement of the Parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the Parties may agree to select a single arbitrator to resolve a dispute. All arbitration proceedings shall be held in Maricopa County, or at such other place as shall be agreed by the Parties.
4. **Award.** The award shall be made within 60 days of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding upon all Parties to the proceeding. Any action to enforce the arbitration award must be filed within 180 days from the issuance of the award.
5. **Governing Law.** This RFGAA, including any claim or dispute arising hereunder submitted to binding arbitration, shall be governed by the laws of the State of Arizona.
6. **Enforcement.** Judgment upon any award rendered by the arbitrators against the Tribal Applicant may be entered in the Tribal Applicant’s tribal court system (“Tribal Court”) or against the State of Arizona in the Arizona State Court System (“Court System”) and interpreted and/or enforced pursuant to the terms of this RFGAA, and/or pursuant to the terms of the AAA’s Commercial Arbitration Rules, and/or pursuant to the terms and

provisions of the statutes, rules and regulations governing or providing for interpretation or enforcement of judgments applicable in any State of Arizona or Tribal Nation court of the Applicant.