

## VIII. STANDARD TERMS AND CONDITIONS

- A. **Effective Date.** This RFGAA shall become effective upon signing and dating of the Offer and Acceptance by ADOT.
- B. **Amendments.** Any change or modification to this RFGAA will only occur with the mutual written consent of both Parties and may require further approval of the Board.
- C. **Duration.** The terms, conditions and provisions of this RFGAA shall remain in full force and effect until completion of the Project and all reports, performance metrics and other information required for the Project have been submitted and related deposits and/or reimbursements are made.
- D. **Cancellation.** This RFGAA may be cancelled at any time by either Party prior to the exchange of any AZ SMART Funds and after 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the Applicant terminates this RFGAA, the Applicant shall be responsible for all costs paid by the State up to the time of termination. It is further understood and agreed that in the event the Applicant terminates this RFGAA, the State shall have no further obligations to reimburse AZ SMART Funds to the Applicant.
- E. **Costs.** The final Project amount may exceed the estimate(s) identified in the Application, and in such case, the Applicant is responsible for, and agrees to pay, any and all actual costs exceeding the amount awarded from AZ SMART. If the final Project amount is less than the initial estimate, the difference between the final Project design amount and the initial estimate will be de-obligated or otherwise released from the Project. Any remaining AZ SMART Funds will be returned to the State. The Applicant acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this RFGAA.
- F. **Indemnification.** The Applicant shall indemnify, defend, and hold harmless the State, any of its departments, agencies, boards, commissions, 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 Applicant, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this RFGAA. The Applicant'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 Applicant which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Applicant's obligations under this paragraph shall survive the termination of this RFGAA.
- G. **Third-Party Indemnification.** The State shall include Section 107.13 of the 2021 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated into this RFGAA by reference, in the State's contract with any and all contractors, of which the Local Agency shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the Applicant.
- H. **Liability.** ADOT assumes no liability or financial responsibility for AZ SMART Fund Projects, except as set forth in the Indemnification above, or the information submitted by the Applicant. The Applicant is solely responsible for complying with all applicable laws, rules

and regulations, for any additional funding required to complete the Project and for any claims due to delays, change orders or any other circumstances.

- I. **Summaries.** ADOT may develop and present various summaries of the RFGAA or data and information provided by the Applicant in response to this RFGAA. Such summaries are for convenience only and do not take the place of this RFGAA.
- J. **Federal Funding Accountability and Transparency Act.** 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 Applicant 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.
- K. **Single Audit.** The Applicant 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. An electronic copy of the Single Audit is to be sent within the required deadline of nine months of the sub recipient fiscal year end to:  
  
ADOT – FMS  
Attn: Cost Accounting Administrator  
206 S 17th Ave. Mail Drop 204B  
Phoenix, AZ 85007  
[SingleAudit@azdot.gov](mailto:SingleAudit@azdot.gov)
- L. **Audited Financial Statements.** Applicants receiving an AZ SMART award for DOES or Match shall provide an electronic copy of its audited financial statements to [azsmart@azdot.gov](mailto:azsmart@azdot.gov) within three months of the Applicant's fiscal year end until the final Project accounting is complete.
- M. **Governing Law.** This RFGAA shall be governed by and construed in accordance with Arizona laws.
- N. **Conflicts of Interest.** This RFGAA may be cancelled in accordance with A.R.S. § 38-511.
- O. **Records.** The Applicant is required to retain all books, accounts, reports, files and other records relating to this RFGAA for a period of five years after the date of the final payment of AZ SMART Funds from ADOT. Such records shall be produced by the Local Agency, electronically or at the State office as set forth in this RFGAA, at the request of ADOT or the State Auditor General.
- P. **Audit.** All books, accounts, reports, files and other records relating to this RFGAA shall be subject to inspection and audit. The State may refer Projects to the State Auditor General or ADOT's Internal Audit unit in cases of suspected misuse of AZ SMART Funding.
- Q. **Title VI.** The Applicant acknowledges and will comply with Title VI of the Civil Rights Act of 1964.

This Agreement is subject to the provisions of Title VI of the Civil Rights Act and the Applicant is herein notified of such. All contracts between ADOT and its contractors for

completing the work designated in this Agreement will include the following statement in addition to Appendix A and Appendix E of its ADOT Signed Title VI Assurances, available at <https://azdot.gov/business/civil-rightsexternal-eeo-contractor-compliance/title-vi-nondiscrimination-program/title-vi>:

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4), the Americans with Disabilities Act (ADA) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

For self-administered projects receiving DOES funding, additional certifications may be required (see <https://azdot.gov/sites/default/files/media/2021/06/Blank-FHWA-Title-VI-Assurances-Subrecipient-uneditable.docx> or most current version; document will download when the link is clicked).

- R. **Non-Discrimination.** This RFGAA is subject to all applicable provisions of the Americans with Disabilities Act (Act) (Public Law 101-336, 42 USC. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 34 and 36. Applicants shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246 as amended, Arizona STATE Executive Order 2009-09, as amended by amended by STATE Executive Orders 2023-01 and 2023-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding “Non-Discrimination”, or Arizona Revised Statutes §§ 41-1461 through 1465, and all other applicable STATE and federal employment laws, rules and regulations.
- S. **Israel Boycott Not Permitted.** The Applicant warrants that it is not engaged in a boycott of Israel as defined in A.R.S. 35-393 et seq.
- T. **Forced Labor of Ethnic Uyghurs Ban.** Pursuant to A.R.S. § 35-394, the Applicant warrants and by signing this Agreement so certifies that it does not currently, and agrees for the duration of the contract that it will not use the forced labor of ethnic Uyghurs in the People's Republic of China, any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, or any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Applicant becomes aware during the term of this Agreement that the Applicant is not in compliance with this certification, the Applicant shall notify ADOT within five business days after becoming aware of the noncompliance, and within 180 days after notice, provide written certification that the Applicant has remedied the noncompliance. This item does not apply to not-for-profit organizations or organizations with fewer than ten (10) full-time employees.
- U. **Non-Availability of Funds.** Every obligation of the State under this RFGAA 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 RFGAA, this RFGAA 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.

- V. **Arbitration.** In the event of any controversy which may arise out of this RFGAA, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
- W. **E-Verify.** The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
- X. **Contractor Certifications.** The Applicant shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.
- Y. **Other Applicable Laws.** The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
- Z. **Notices.** All notices or demands upon any Party to this RFGAA shall be in writing and shall be delivered electronically, in person, or sent by mail, addressed as follows:
1. **For RFGAA Administration:**  
Arizona Department of Transportation  
Joint Project Agreement Group  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, AZ 85007  
[JPABranch@azdot.gov](mailto:JPABranch@azdot.gov)
  2. **For Project Administration:**  
Arizona Department of Transportation  
Multimodal Planning Division  
Attn: AZ SMART Fund Program  
1611 W Jackson St, MD 310B  
Phoenix, AZ 85007  
602-712-7112  
[azsmart@azdot.gov](mailto:azsmart@azdot.gov)
  3. **For Financial Administration:**  
Arizona Department of Transportation  
Multimodal Planning Division  
Attn: AZ SMART Fund Program  
1611 W Jackson St, MD 310B  
Phoenix, AZ 85007  
602-712-7112  
[azsmart@azdot.gov](mailto:azsmart@azdot.gov)
- AA. **Revisions to Contacts.** Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
- BB. **Electronic Signatures.** This RFGAA may be signed in an electronic format. Pursuant to ARS §44-7031, the signature must be unique to the persons signing the document, capable of verification, under the sole control of the persons using it, and linked to the document so that if the record were changed the electronic signature would be invalid.