

CONTRACT NO _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA, ARIZONA,
AND
THE COUNTY OF MARICOPA, ARIZONA
AND
THE CITY OF PHOENIX, ARIZONA
FOR
EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM
FY 2020 LOCAL SOLICITATION (CFDA #: 16.738)**

Pursuant to A.R.S. §11-952, this Intergovernmental Agreement (AGREEMENT) is entered into as of the 1st day of October, 2019 by and between the City of Mesa, Arizona (MESA), a municipal corporation duly organized and existing under the laws of the State of Arizona, for and on behalf of the Mesa Police Department; Maricopa County (COUNTY), a political subdivision duly organized and existing under the laws of the State of Arizona, for and on behalf of the Maricopa County Office of the Medical Examiner; and the City of Phoenix, Arizona (PHOENIX), a municipal corporation duly organized and existing under the laws of the State of Arizona, for and on behalf of the Phoenix Police Department. MESA, COUNTY and PHOENIX may also be referred to individually as 'PARTY' or collectively as 'PARTIES'.

RECITALS

WHEREAS, the PARTIES have become entitled to certain grant funds through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and

WHEREAS, a disparity exists between the funding eligibility of the PARTIES as determined by 42 USC § 3755 (d)(3)(4); and

WHEREAS, Federal law requires that units of local government within a group of jurisdictions identified as disparate to agree upon an allocation process; and

WHEREAS, the PARTIES believe it to be in their best interests to reallocate the JAG funds to resolve said disparity;

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES hereby agree as follows:

SECTION 1

The purpose of this AGREEMENT is to reallocate the funds available to the PARTIES from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program and to resolve disparities in compliance with 42 USC § 3755 (d)(3)(4). In compliance therewith the PARTIES agree PHOENIX shall receive all the funds and distribute the funds to MESA and COUNTY as follows:

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1. PHOENIX agrees to receive **\$1,024,557** from the JAG award for the PHOENIX JAG Program; and
2. PHOENIX agrees to pay MESA a total of **\$134,747** of JAG funds; and
3. PHOENIX agrees to pay COUNTY a total of **\$87,887** of JAG funds ; and
4. PHOENIX shall retain **\$801,923** for the JAG Program (collectively “allocated funds”).
5. PHOENIX agrees to make all payments to MESA and COUNTY within thirty (30) days after receipt of the JAG funds by PHOENIX.

SECTION 2

The PARTIES agree to use allocated funds for the JAG Program on or before September 30, 2023.

SECTION 3

1. **Term.** The term of this AGREEMENT shall commence simultaneously with the FY2020 JAG grant program year on October 1, 2019 and continue until September 30, 2023 unless terminated sooner in accordance with the terms of the grant, and such reasonable time thereafter as may be needed to complete the administration of the grant.
 - A. **Obligations of PHOENIX.** PHOENIX agrees to administer the Funds as provided in Section 1, and shall:
 - (a) Ensure that the funds received by PHOENIX are dispersed to MESA and COUNTY in accordance to this AGREEMENT; and
 - (b) Collect and transmit to the appropriate Federal funding authorities all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations.
 - B. **Obligations of MESA and COUNTY.** During the term of this AGREEMENT, MESA and COUNTY:
 - (a) Agree that PHOENIX will administer the Funds as provided in Section 1; and
 - (b) Will maintain and provide to PHOENIX all financial and program reports as required by the terms and conditions of the grant and applicable Federal regulations; and
 - (c) Will be responsible for the actions of their respective employees in providing services under this AGREEMENT and shall hold harmless the PARTIES to this AGREEMENT from any liability that may arise from the furnishing of the services by the other PARTIES.

- 2. DISCLAIMER.** This AGREEMENT is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, agency, partnership or formal business association or organization of any kind among the PARTIES, and the rights and obligations of the PARTIES shall be only those expressly set forth in this AGREEMENT.
- 3. NON-AVAILABILITY OF FUNDS.** Each payment obligation of the PARTIES created hereby is conditioned on the availability of funds. The PARTIES recognize that the continuation of this AGREEMENT after the close of any of their respective fiscal years shall be subject to the approval of their respective governing bodies providing an appropriation covering this item as an expenditure. None of the PARTIES represent that said budget items will be actually adopted.

SECTION 4

The PARTIES to this AGREEMENT do not intend for any third party to obtain a right by virtue of this AGREEMENT.

SECTION 5

Notice is given that pursuant to A.R.S. 38-511 the PARTIES may cancel any AGREEMENT without penalty or further obligation within three years after execution of the AGREEMENT, if any person significantly involved in initiating, negotiating, securing, drafting or creating the AGREEMENT on behalf of the PARTY is at any time while the AGREEMENT or any extension of the AGREEMENT is in effect, an employee or agent of any other party to the AGREEMENT in any capacity or consultant to any other party of the AGREEMENT with respect to the subject matter of the AGREEMENT. Additionally, pursuant to A.R.S. 38-511 the PARTIES may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the AGREEMENT on behalf of the PARTIES from any other party to the AGREEMENT arising as the result of the AGREEMENT.

SECTION 6

By entering into this AGREEMENT, the PARTIES do not intend to create any obligations express or implied other than those set out herein. Further, this AGREEMENT shall not create any rights in any party not a signatory hereto.

SECTION 7

The PARTIES warrant they are in compliance with the provisions in A.R.S. §41-4401 (e-verify).

SECTION 8

Each PARTY (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other PARTY (as "Indemnitee") from and against all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees, expert witnesses' fees and other litigation costs) (hereinafter collectively referred to as "Claims") arising out of bodily injury (including death) of

any person or property damage, but only to the extent that such claims, which result in vicarious liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

SECTION 9

Each PARTY agrees to comply with the federal certifications regarding lobbying, debarment, suspension and other responsibility matters, and drug free workplace requirements for this grant.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the PARTIES certify that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

Pursuant to Executive Order 12549, Debarment and Suspension, implemented at 2 CFR Part 2867, for prospective participants in primary covered transactions, as defined at 2 CFR Section 2867.20(a), and other requirements:

A. The PARTIES certify that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this AGREEMENT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal

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offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- (c) Have not within a two-year period preceding this AGREEMENT been convicted of a felony criminal violation under any Federal law, unless such felony criminal conviction has been disclosed in writing to the Office of Justice Programs (OJP) at Ojpcompliance@usdoj.gov , and, after such disclosure, the has received a specific written determination from OJP that neither suspension nor debarment of the PARTY is necessary to protect the interests of the Government in this case.
- (d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (e) Have not within a three-year period preceding this AGREEMENT had one or more public transactions (Federal, State, or local) terminated for cause or default.

B. Where any PARTY is unable to certify to any of the statements in this certification, said PARTY shall attach an explanation to this AGREEMENT.

3. DRUG-FREE WORKPLACE

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

- A. The applicant certifies that it will or will continue to provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an on-going drug-free awareness program to inform employees about
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

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- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the granting agency, and the PHOENIX Grant Administrator (Exhibit A), in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

As the duly authorized representative of the PARTY, the undersigned hereby certify that the PARTY will comply with the above certifications.

(Remainder intentionally left blank. Signatures to follow)

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COUNTY OF MARICOPA**

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FOR
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MARICOPA COUNTY

This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.

By: _____

Type Name: Clint Hickman

Its: Chairman of the Board of Supervisors

Deputy County Attorney

Attest: _____

Type Name: Fran McCarroll, Clerk of the Board

Date _____

Date: _____

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CITY OF MESA

This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.

By: _____

Type Name: _____

Its: _____

Attest: _____

Mesa City Attorney

Type Name: _____

Date _____

Date: _____

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**THE STATE OF ARIZONA
COUNTY OF MARICOPA**

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CITY OF PHOENIX

This Agreement is in the proper legal form and is within the powers and authority granted under the laws of this State to those parties represented by the undersigned legal counsel.

By: _____

Type Name: Ed Zuercher

Its: City Manager

Phoenix City Attorney

Attest: _____

Type Name: _____

Date _____

Date: _____

**EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
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Notices provided under this AGREEMENT shall be directed to the following persons:

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|---|---|
| <p>The CITY of <u>PHOENIX</u>:</p> <p>Name: Denise Varnell Address: Phoenix Police Department Address: 4th Floor, Suite 422 Address: 620 W. Washington St City/St/Zip: Phoenix, AZ 85003 Phone: 602-534-3622 Fax: 602-534-1613</p> | |
| <p>The CITY of <u>MESA</u></p> <p>Name: Krisa York Address: Mesa Police Department Address: P.O. Box 1466 Address: City/St/Zip: Mesa, AZ 85211 Phone: 480-644-5986 Fax: 480-644-2857</p> | <p>The <u>COUNTY</u> of MARICOPA</p> <p>Name: Amy Rex Address: Office of Medical Examiner Address: 701 W. Jefferson Street Address: City/St/Zip: Phoenix, AZ 85007 Phone: Fax:</p> |