

ADOT CAR No.: IGA 17-0006734-I
AG Contract No.: P0012018000623
Project Location/Name: Juan Sanchez
Blvd; 10th Ave-Avenue E (SR 195)
Type of Work: Rumble Strip
Improvements
Federal-aid No.: HSIP-SLS-0(204)T
ADOT Project No.: T0165 01D/01C
TIP/STIP No.: SL18-01C
**CFDA No.: 20.205 - Highway Planning
and Construction**
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SAN LUIS

THIS AGREEMENT is entered into this date _____, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the “State” or “ADOT”) and the CITY OF SAN LUIS, acting by and through its MAYOR and CITY COUNCIL (the “City”). The State and the City are collectively referred to as “Parties”.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 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 Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The improvements proposed in this Agreement, include the design, construction, and installation of centerline rumble strips, thermoplastic pavement markings, raised pavement markers, new signs and associated work on Juan Sanchez Blvd. from 10th Avenue (Avenue H) to Avenue E (SR 195), (the “Project”). The State will administer the design and advertise, bid and award the construction phase of the Project.
4. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.

5. The Parties agree that the City and ADOT will each separately file a Notice of Intent (NOI) under the Construction General Permit (CGP) with the Arizona Department of Environmental Quality (ADEQ) before construction begins, if applicable to the Project.
6. The Parties acknowledge that the final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the City is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all actual costs exceeding the programmed amount.
7. The Parties will perform their responsibilities consistent with this Agreement, and any change or modification to the Project will only occur with the mutual written consent of both Parties.
8. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project plans and specifications.

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

II. SCOPE OF WORK

1. The State will:
 - a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the City designated agent for the Project.
 - b. Prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the City, as appropriate. Review and approve documents required by FHWA to qualify the Project for and to receive federal funds. Perform tasks that may consist of, but are not limited to, preparation of environmental documents; analysis and documentation of environmental categorical exclusion determinations; geologic materials testing and analysis; right-of-way related activities; preparation of reports, design plans, maps, specifications and cost estimates and other related tasks essential to the development of the Project.
 - c. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal funds programmed for this Project be approved for scoping/design. After receipt of FHWA authorization, proceed to advertise for and enter into contract(s) with the consultant(s) for the design and post design of the Project. Should costs exceed the maximum federal funds available it is understood and agreed that the City will be responsible for any overage.
 - d. Submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for construction of this Project be approved.

Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

- e. After receipt of FHWA authorization, proceed to administer construction, advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain City concurrence prior to awarding the contract. After the Project is awarded, invoice the City for the difference between estimated and actual costs, if applicable.
 - f. Notify the City of substantial completion and final acceptance of the Project. At such time, file a Notice of Termination (NOT) with ADEQ transferring CGP responsibilities to the City, and provide a copy to the City indicating that the State's maintenance responsibility of the Project is terminated, as applicable.
 - g. Notify the City of substantial completion and final acceptance of the Project; coordinate with the City and turn over full responsibility of the Project improvements.
 - h. Not be obligated to maintain the Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.
2. The City will:
- a. Designate the State as the City's authorized agent for the Project.
 - b. Review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds; provide design review comments within two weeks of receipt to the State as appropriate.
 - c. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
 - d. Certify that 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 ROW 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 City, if applicable.

- e. Certify that the City has adequate resources to discharge the City'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 they 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)
- f. 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 City shall take all necessary steps to remove or prevent any such encroachment or use.
- g. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said City rights-of-way. This temporary right will expire with completion of the Project.
- h. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve an easement within the final right-of-way to re-establish the prior right location for those utilities with prior rights.
- i. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any City-requested changes to the scope of work of the Project; such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the City. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
- j. After notification of final acceptance by the State, assume and maintain full responsibility of the Project, including Storm Water Pollution Prevention Plans (SWPPP) inspections, maintenance, and required documentation, until final stabilization is reached. Provide the NOI number to the State and the Contractor, accept CGP responsibilities at time of transfer, and file an NOT with ADEQ when final stabilization is reached, as applicable.
- k. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components.
- l. Pursuant to 23 USC 102(b), repay all federal funds reimbursements for preliminary engineering costs on the Project if it does not advance to right of way acquisition or construction within 10 years after federal funds were first made available.

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 completion of the Project and all related deposits and/or reimbursements are made. Any provisions for maintenance shall be perpetual, unless assumed by another competent entity.
3. This Agreement may be cancelled at any time prior to the award of the Project contract and after 30 days written notice to the other Party. 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 complete or maintain the Project.
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 State shall include Section 107.13 of the 2008 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated to this Agreement by reference, in the State's contract with any and all contractors, of which the City shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the City.
6. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the federal funds programmed for this Project, up to the maximum available. The City acknowledges that actual Project 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 of the Project and the federal funds received.
7. Should the federal funding related to this Project 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.
8. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

9. 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.
10. The City acknowledges that as a condition to receiving any federal financial assistance from the U.S. Department of Transportation (DOT), through FHWA and ADOT, the City is subject to and will comply with the following: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation--Effectuation Of Title VI Of The Civil Rights Act Of 1964); 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964); 23 C.F.R. Part 200 Subchapter C-Civil Rights (Title VI program implementation and related statutes). The City has agreed to and signed Title VI Assurances as required by the US DOT Order 1050.2A. The Title VI Assurances are incorporated into this Agreement as set forth herein and attached hereto in full as Attachment One.
11. 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 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov
12. This Agreement shall be governed by and construed in accordance with Arizona laws.
13. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.
14. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.
15. 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".
16. Non-Availability of Funds: 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.

17. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.
18. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.
19. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01.
20. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
21. 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. 17th Avenue, Mail Drop 637E
 Phoenix, AZ 85007
JPABranch@azdot.gov

City of San Luis
 Attn: Kay Marion Macuil
 City Attorney
 1090 E. Union Street
 (by in-person delivery)
 P.O. Box 1170 (by mail)
 San Luis, Arizona 85349
 Phone (928) 341-8526
 Fax (928) 722-0263
kmacuil@cityofsanluis.org

For Project Administration:

Arizona Department of Transportation
 Project Management Group
 205 S. 17th Avenue, Mail Drop 614E
 Phoenix, AZ 85007
 602.712.7545

City of San Luis
 Attn: Eulogio Vera,
 Public Works Director
 1090 E. Union Street
 (by in-person delivery)
 P.O. Box 3750 (by mail)
 San Luis, Arizona 85349
 Phone (928) 341-8577
 Fax (928) 341-8599
evera@cityofsanluis.org

For Financial Administration:

Arizona Department of Transportation
 Project Management Group
 205 S. 17th Avenue, Mail Drop 614E
 Phoenix, AZ 85007
 602.712.7545

City of San Luis
 Attn: Monica Castro
 Finance Director
 1090 E. Union Street
 (by in-person delivery)
 P.O. Box 7740 (by mail)
 San Luis, Arizona 85349

Phone (928) 341-8553
Fax (928) 341-8549
Mcastro@cityofsanluis.org

22. In accordance with Arizona Revised Statutes § 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.

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

CITY OF SAN LUIS

STATE OF ARIZONA
Department of Transportation

By _____
GERARDO SANCHEZ
Mayor

By _____
STEVE BOSCHEN, P.E.
Division Director

ATTEST:

By _____
SONIA CORNELIO
City Clerk

ATTORNEY APPROVAL FORM FOR THE CITY OF SAN LUIS

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 SAN LUIS, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 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 _____, 2018.

Kay Marion Macuil
City Attorney

EXHIBIT A

IGA 17-0006734-I Cost Estimate

T0165 01D/01C

The federal funds will be used for the scoping/design and construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

T016501D (scoping/design):

FHWA's contribution @ 100%	\$ 130,000.00
Subtotal - Scoping/Design/PDA*	\$ 130,000.00

T016501C (construction):

FHWA's contribution @ 100%	\$ 188,374.00
Subtotal - Construction**	\$ 188,374.00
Estimated TOTAL Project Cost	\$ 318,374.00
Total Federal Funds	\$ 318,374.00

* (Includes ADOT Project Development Administration (PDA) Costs)

** (Includes 15% CE (this percentage is subject to change, any change will require concurrence from the City) and 5% Project contingencies)