

ADOT File No.: IGA/JPA 11-206-I
AG Contract No.: P001 2012
ADOT No.: **SZ018 03D**
Federal Project No.: CBI-SLS-0(203)A
Project: Juan Sanchez Boulevard
Improvements
Location: US 95 East to SR 195
CBI federal funding
YMPO TIP 2011-16 Amendment # 2

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SAN LUIS

THIS AGREEMENT is entered into this date July 9th, 2012 (*effective 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") and the CITY OF SAN LUIS, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City collectively are 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 hereto and made a part hereof, resolved to enter into this Agreement on behalf of the City.
 3. Such Project lies within the boundary of the City and has been selected by the City for development. The project will be submitted to the State and Federal Highway Administration (FHWA) for its approval.
 4. The interest of the State in this Project is the acquisition of Federal funds for the use and benefit of the City and to authorize such Federal funds for the project pursuant to Federal law and regulations.
 5. The City, in order to obtain Federal funds for *the Project* is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the State and FHWA.
 6. The City is in agreement to use one of the State's on-call design companies to prepare a project assessment report; 30% general plan, final design plans and the necessary environmental documents required for construction. The State will be the City's designated agent for obtaining Federal funds hereinafter referred to as the "Project." The Project consists of preparing the project documents for reconstructing and widening the existing two lane roadway along Juan Sanchez Boulevard to a four lane urban section.
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7. The Project cost breakdown is as follows:

ADOT Project No. SZ018 03D

CBI Federal Aid @ 94.3% (capped)	\$1,131,600.00
City Match @ 5.7%	\$ 68,400.00
Estimated ADOT Preliminary Engineering Cost	<u>\$ 10,000.00</u>
Estimate Project Cost	\$1,210,000.00

The Parties acknowledge that the eventual actual cost may exceed the *cost estimate*, and in such case, the City is responsible for *any and all costs exceeding the cost estimate*. Actual costs may be less than the estimate and not needed for the Project, at which time any excess Federal funding will be de-obligated from the Project.

Federal funding is subject to de-obligation and removal from the Project twelve (12) months after the date of initial authorization unless sufficient justification regarding the delay and the expected design start date are provided to the State and FHWA in writing.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement and on behalf of the City, act as the City's designated agent. Prior to performing or authorizing any work, invoice the City for the State's design review fee, currently estimated at \$10,000.00.

b. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the City's estimated *contribution match* for an amount of \$ 68,400.00 for the Project. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

c. On behalf of the City, use one of the State's on-call design companies to prepare all pertaining documents for the project; review and approve documents required by FHWA to qualify certain projects for and to receive Federal funds. Such documents may consist of, but are not specifically limited to, environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of prepared reports, design plans, maps and specification; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement. Send a review set of all design plans and project documents prepared by the design consultant to the City. Review design plans and project documents for said Project and, provide comments to the City and or design consultant as appropriate.

d. Submit all documentation required to the FHWA containing the above-mentioned Project with the recommendation that funding be approved for the Project. Request the maximum Federal funds be programmed for the *design* of this Project. Should costs be deemed ineligible or exceed the maximum Federal funds available, it is understood and agreed that the City will be responsible for these costs. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

e. Review Project documents and reports for said Project, provide comments to the City as appropriate.

f. The design consultant shall provide services as required and requested throughout the development phase of the Project.

g. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

2. The City will:

a. Upon execution of this Agreement, authorize the State to be the designated agent for the City. Prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the State's review fee, currently estimated at \$10,000.00. Be responsible for any difference between the estimated and actual design review costs.

b. Upon execution of this Agreement, and within thirty (30) days of receipt of an invoice from the State, remit to the State the City's *contribution match* for an amount of \$ 68,400.00.

c. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the Project. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including documents required by FHWA to qualify projects for and to receive federal funds.

d. Enter into an Agreement with the State for the use of one of the Consultants to provide services as required and requested throughout the development of the Project including the construction phase of the Project.

e. Monitor, and as required, be involved with all right of way activities and functions performed by the Consultant, including, but not specifically limited to, right of way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management.

f. Review design plans project documents and provide review comments, within 15 days of receipt of document, to the design consultant and the State as appropriate.

g. Be entirely responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding, including the State's design review fee separately billed by the State and included in the cost estimate. 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.

h. 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.

i. Upon completion of the Project, agree to accept, maintain and assume full responsibility of said Project in writing.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement. Further, this Agreement may be cancelled at any time upon thirty days (30) written notice to the other party. Should the City terminate the Agreement, the City will reimburse the State for any costs incurred by the State as a result of the termination.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and any construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of design covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

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

5. The cost of the Project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

7. The Parties warrant compliance with the "Buy America" requirements as set forth in Section 106.15 of the ADOT Standard Specifications for Road and Bridge Construction.

8. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

9. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. 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:

Arizona Department of Transportation (ADOT)
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

ADOT Financial Management Services
Attn: Project Accounting
206 S. 17th Avenue, Mail Drop 204B
Phoenix, Arizona 85007
(602) 712-8471 Fax

City of San Luis
Attn: John Starkey
Public Works Director
P.O. Box 1170
San Luis, Arizona 85349
(928) 341-8577
(928) 341-8599 Fax

For City Financial Matters:
Attn: Kettie St Louis, Finance Director
P.O. Box 1170
San Luis, Arizona 85349

(928) 341-8520
(928) 341-341-8549
kstlouis@cityofsanluis.org

11. 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 herein by reference regarding "Non-Discrimination".

12. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment 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.

13. If the federal funding related to this Project is terminated or reduced by the federal government, or if the federal government 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.

14. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The City warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214, Subsection A.

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract, and the City may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the City or subcontractor is complying with the warranty under paragraph (a).

15. The City warrants compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 amendments and with Arizona Revised Statutes § 41-725.

16. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

17. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

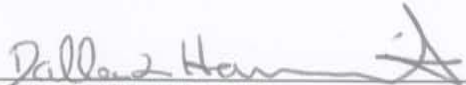
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF SAN LUIS

STATE OF ARIZONA

Department of Transportation

By 
GERARDO SANCHEZ
Mayor

By 
DALLAS HAMMIT, P.E.
Deputy State Engineer, Development

ATTEST:

By 
SONIA CUELLO
City Clerk

May 8th, 2012-ly



Resolution

NO. 978

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SAN LUIS AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT).

Whereas, the City of San Luis desires to enter into an intergovernmental agreement with the State of Arizona Department of Transportation regarding a project to prepare a project assessment report; 30% general plan, final design plans, and the necessary environmental documents required for construction. The project consists of preparing said documents for reconstructing and widening the existing two lane roadway along Juan Sanchez Boulevard to a four lane urban section. This project will be from US Highway 95 to SR195 and is four and one half miles in length; and

Whereas, the parties to the Intergovernmental Agreement desire to enter into said agreement;

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

Section 1: That the Intergovernmental Agreement, as attached hereto as Exhibit "A", is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said agreement on behalf of the City and take any and all actions as may necessary to effectuate said agreement.

13th PASSED AND ADOPTED by the Mayor and City Council of the City of San Luis, Arizona, this day of June, 2012.

Gerardo Sanchez, Mayor

ATTEST:

Sonia Cuello, City Clerk

APPROVED AS TO FORM:

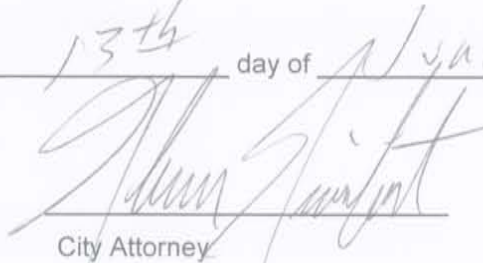
Glenn Gimbut, City Attorney

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 between 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 13th day of June, 2012.



City Attorney



TOM HORNE
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION

SUSAN E. DAVIS
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8855
E-MAIL: SUSAN.DAVIS@AZAG.GOV


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012012001457 (**IGA/JPA 11-206-I**), an Agreement between public agencies, i.e., The State of Arizona and City of San Luis, has been reviewed pursuant to A.R.S. §§ 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: July 9, 2012

TOM HORNE
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:In:#2787791
Attachment