



Resolution

NO. 1049

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A 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 FOR ROADWAY CONSTRUCTION OF AVENUE 'E' FROM COUNTY 23RD TO COUNTY 25TH.

Whereas, the City of San Luis, Arizona desires to enter into an Intergovernmental Agreement with the State of Arizona regarding roadway construction on Avenue 'E' from County 23rd to County 25th.

Whereas, the purpose of the Agreement is to provide for the design and construction related to the widening of Avenue E to a 4-lane roadway, and the project is for the benefit of the citizens and residents of the City and the public in general;

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, 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.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 9th day of April, 2014.

Gerardo Sanchez, Mayor

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Glenn Gimbut, City Attorney

CONFORMED COPY
2014-10994 RESOLUTION
05/19/2014 10:57:35 AM Pages: 12 Fees: \$11.50
Requested By: CITY OF SAN LUIS
Recorded By: dshepard
Robyn Stallworth Pouquette County Recorder, YUMA County AZ

ADOT File No.: IGA/JPA 14-0004006-I
AG Contract No.: P001 2014 001 143
Project: Re-construction and Widening
Section: Avenue E from County 25th
Street to SR 195
Federal-aid No.: SLS-0(201)A
ADOT Project No.: SZ016 01C
TIP/STIP No.: SAN-12-08C 2014
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 April 29th 2014, 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 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 hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
 3. The work proposed under this Agreement consists of widening along Avenue E to a four lane street from County 25th Street to State Route (SR) 195 approximately 2 miles, hereinafter referred to as the "Project". The City has completed and has provided the design documents and project clearances as referenced in IGA/JPA 11-207-I, the State will advertise, bid, award and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
 4. The City, in order to obtain federal funds for the construction of the Project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE).
 5. 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. The State shall be the designated agent for the City.
 6. The Parties shall 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.
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7. The federal funds will be used for the construction of the Project, including the construction engineering and administration cost (CE). The estimated Project costs are as follows:

SZ016 01C (construction)

Federal-aid funds (CBI) @ 94.3%	\$2,468,600.00
City's match @ 5.7%	\$ 149,215.00
Federal-aid funds (STP) @ 94.3%	\$ 1,131,385.00
City's match @ 5.7%	<u>\$ 68,387.00</u>
Total Estimated City's Funds	\$ 217,602.00
Total Federal Funds	<u>\$3,599,985.00</u>
TOTAL Project Construction Costs**	\$3,817,587.00

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, 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 eventual, actual costs exceeding the final bid amount.

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

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement be the designated agent for the City, if the Project is approved by FHWA and funds for the Project are available.

b. Review the design plans, specifications and other such documents and provide services required for the construction bidding and construction administration of the Project and provide comments to the City as appropriate.

c. Upon completion of design and prior to bid advertisement, invoice the City for the City's share of the Project construction costs, currently estimated at **\$217,602.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual Project construction costs.

d. Upon receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction. Request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

e. Upon FHWA authorization proceed to advertise for, receive and open bids, subject to the concurrence of the City to whom the award is made, and enter into a contract(s) with a firm(s) for the construction of the Project.

f. Be granted, without cost requirements, the right to enter City right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry on to and over said rights-of-way of the City.

g. Notify the City that the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

h. Not be obligated to maintain said 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. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Prepare and provide the design plans, specifications and other such documents and services required for construction bidding and construction of the Project and incorporate comments from the State as appropriate.

c. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

d. Upon completion of design, within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, currently estimated at **\$217,602.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

e. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, 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 thirty (30) days of receipt of an invoice from the State.

f. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City. Such changes require the prior approval of the State and FHWA. Be responsible for any contractor claims for additional compensation caused by Project delays, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

g. 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, 9.07 Monitoring Process and 9.08 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.

h. Not permit or allow any encroachments upon 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.

i. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.

j. Upon completion of the construction phase of the Project, provide an electronic version of the as-built plans to Arizona Department, Statewide Transportation Management Group.

k. Upon notification of Project completion, from the State, agree to accept, maintain and assume full responsibility of the 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, including related deposits and/or reimbursements. Any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the City. This Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty (30) days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that should the City terminate this Agreement, the State shall in no way be obligated to maintain said Project.

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 the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely 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 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 construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The City acknowledges that the eventual actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the City agrees to furnish and provide the difference between actual costs of the Project and the federal funds received.

4. 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.

5. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

6. 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.

7. The City acknowledges compliance with federal laws and regulations and may be subject to the Office of Management and Budget (OMB), Single Audit, Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Entities that expend \$500,000.00 or more (prior to 12/26/14) and \$750,000 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. A copy of the Single Audit is to be sent to Arizona Department of Transportation Financial Management Services within the required deadline of nine (9) months of the sub recipient fiscal year end.

ADOT – FMS
Cost Accounting Administrator
206 S 17th Ave. Mail Drop 204B
Phoenix, AZ 85007
SingleAudit@azdot.gov

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

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

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

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 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.

13. 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.

14. The Parties shall comply with the applicable requirements of Arizona Revised Statute § 41-4401.

15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

16. 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
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

City of San Luis
Attn: Sonia Cornelio
P.O. Box 1170
San Luis, Arizona 85349
(928) 341-8520
scornelio@cityofsanluis.org

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.

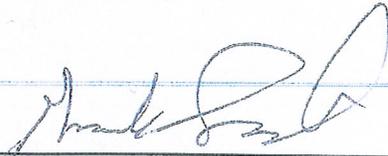
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF SAN LUIS

STATE OF ARIZONA

Department of Transportation

By



GERARDO SANCHEZ
Mayor

By



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

ATTEST:

By



SONIA CORNELIO
City Clerk

April 3rd 2014-ly



Resolution

NO. 1049

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A 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 FOR ROADWAY CONSTRUCTION OF AVENUE 'E' FROM COUNTY 23RD TO COUNTY 25TH.

Whereas, the City of San Luis, Arizona desires to enter into an Intergovernmental Agreement with the State of Arizona regarding roadway construction on Avenue 'E' from County 23rd to County 25th.

Whereas, the purpose of the Agreement is to provide for the design and construction related to the widening of Avenue E to a 4-lane roadway, and the project is for the benefit of the citizens and residents of the City and the public in general;

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, 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.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 9th day of April, 2014.

Gerardo Sanchez, Mayor

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Glenn Gimbut, City Attorney

8. Discussion and possible action to adopt Resolution No. 1048. A Resolution of the Mayor and City Council of the City of San Luis, Arizona authorizing that the City of San Luis Police Department receive funding from the Arizona Governor's Office of Highway Safety for additional overtime and employee related expenses in the amount of \$5,000.00 to improve our speed enforcement efforts. (Javier Arellano)

Mr. Javier Arellano, Acting Chief of Police, explained that this resolution is for additional funding in the amount of \$5,000.00 to improve the Police Department's speed enforcement efforts.

Mayor G. Sanchez asked Mr. Arellano if all of the new vehicles have radar detectors? Mr. Arellano responded yes they do.

Council Member M.A. Pinzon asked Mr. Arellano how do they determine who gets the overtime for the speed enforcement? Mr. Arellano responded that he defers that to the two (2) Lieutenants who each have two (2) squads.

Council Member A. Luna-Carrasco asked if everybody receives the opportunity. Mr. Arellano responded yes they do.

MOTION: Council Member M.A. Pinzon/Council Member A. Luna-Carrasco to approve Resolution No. 1048 as presented. Motion passed unanimously.

9. Discussion and possible action to adopt Resolution No. 1049. A Resolution of the Mayor and Council of the City of San Luis, Arizona, approving an Intergovernmental Agreement between the City of San Luis and State of Arizona for roadway construction of the Avenue "E" from County 23rd to County 25th.

Mr. Eulogio Vera, Public Works Director, stated that this resolution is for approval for an Intergovernmental Agreement between the City of San Luis and the Arizona Department of Transportation for the roadway construction of Avenue "E" from County 23rd to County 25th and commits the City for matching funds for this project. Currently, this project has an estimated cost of \$3,817,587.00 and requires a 5.7% match from the City which totals \$217,602.00.

Mayor G. Sanchez asked if the City will not be adding more funds? Mr. Vera responded that this is an estimate, and once bids are received they will know if numbers will be low or high, it all depends how contractors see the project.

Vice Mayor M. Rosales asked if the 5.7% match can change? Mr. Vera responded no, and added that the City budgeted \$215,000.00.

Mr. Glenn Gimbut, City Attorney, stated that he noticed that the agenda packet does not include the resolution and there is a standard resolution does states that the attached

Intergovernmental Agreement is being approved and he will prepare the resolution if the Mayor and City Council adopts the resolution tonight.

MOTION: Council Member M.A. Pinzon/Vice Mayor M. Rosales to approve Resolution No. 1049 as stated. Motion passed unanimously.

Mayor G. Sanchez stated that before going into Executive Session, Summary of current events by Mayor, Council Members, City Manager, and/or City Staff pursuant to A.R.S. §38-431.02 (K) and Call to the Public were going to be next on the Agenda. There was no opposition from the City Council.

10. Summary of current events by Mayor, Council Members, City Manager, and/or City Staff pursuant to A.R.S. §38-431.02 (K).

Mr. Hank Green, Fire Chief, reported that earlier this week he sent an email inviting the Mayor and City Council to a meeting with the Yuma County Health Department and the doctors from San Luis Rio Colorado, Mexico. The Arizona Department of Health Services has a program where they are collecting gently used car seats and sharing them with their counterparts in Sonora, Mexico. The used car seats will be distributed tomorrow, April 10, 2014 at 10:00 a.m. at the City of San Luis Fire Department.

Ms. Sharon Williams, Development Services Director, reported that yesterday, April 9, 2014, Mr. Case Van Been from the Planning & Zoning Commission submitted his letter of resignation from the commission due to his increased job duties. Ms. Williams asked the Mayor and City Council to think of names of interested people who would like to participate on the Planning & Zoning Commission. She added that this item will be presented later at a Council meeting as a lined item.

Council Member M.A. Pinzon reported that he attended the Arizona/Mexico Commission in Nogales and commended Customs and Border Patrol, they are really stepping up and reaching out to the communities of Nogales and Douglas. They presented the Commercial Port of Entry needs; and the Mexican Federal Government brought a plan of placing six (6) lanes. Council Member M.A. Pinzon added that they hope to have more information in the next two (2) weeks on this topic.

Mr. Javier Arellano, Acting Chief of Police, invited the Mayor and City Council to attend the Child Abuse Prevention event that will take place at Southwest Junior High School, on April 11, 2014 at 9:00 a.m. and will be hosted by Amberly's Place.

Mayor G. Sanchez reported that this weekend, April 11 & 12, 2014, the City will be holding their Budget Retreat and asked staff to be prepared as numbers will be discussed so that the City of San Luis can run efficiently.

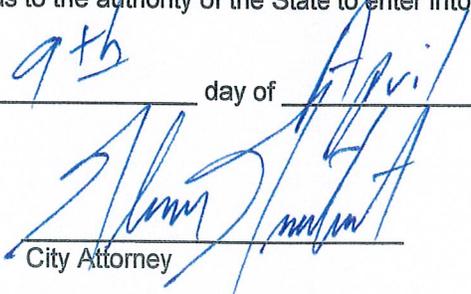
CALL TO THE PUBLIC

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 9th day of April 2014



City Attorney



THOMAS C. 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

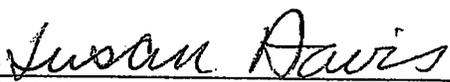
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012014001143 (ADOT IGA/JPA 14-0004006-I), an Agreement between public agencies, 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: April 29, 2014

THOMAS C. HORNE
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:rl:# 3797972
Attachment