

Richard Colwell County Recorder, YUMA County AZ



WHEN RECORDED, MAIL TO:

**CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

CAPTION HEADING:

RESOLUTION,

Resolution No. 2276

Approving an Intergovernmental Agreement between the State of Arizona and the City of San Luis regarding responsibilities for Cesar Chavez Boulevard roadway improvements under the allocation of highway infrastructure programs directed spending projects and the AZ Smart Program.



CITY OF
SAN LUIS
A R I Z O N A
WWW.SANLUISAZ.GOV

P.O. Box 1170 | 1090 E. Union Street San Luis, AZ 85349 | P: (928) 341-8520 F: (928) 341-8539

CERTIFICATION

I do hereby certify that I am a duly appointed City Clerk of the City of San Luis, Arizona, and that the attached is a true and correct copy of the **Resolution No.2276 – IGA with State of Arizona for Cesar Chavez Boulevard Project**, dated July 12, 2023, which is/are on file in the City Clerk's Office, City Hall, San Luis, Arizona.

Dated this 12th day of July 2023.

Sonia Cornelio
Sonia Cornelio, City Clerk



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2276

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE CITY OF SAN LUIS REGARDING RESPONSIBILITIES FOR CESAR CHAVEZ BOULEVARD ROADWAY IMPROVEMENTS UNDER THE ALLOCATION OF HIGHWAY INFRASTRUCTURE PROGRAMS DIRECTED SPENDING PROJECTS AND THE AZ SMART PROGRAM.

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1: The City hereby approves the Intergovernmental Agreement between the State of Arizona and the City of San Luis regarding their responsibilities to design the improvements of Cesar Chavez Boulevard under the Allocation of Highway Infrastructure Programs Directed Spending Projects and the AZ SMART program.

Section 2: The Intergovernmental Agreement is identified by the Arizona Department of Transportation as CAR No.: IGA-22-0008907-1 and by the Arizona Attorney General as Contract No.: P0012023000585.

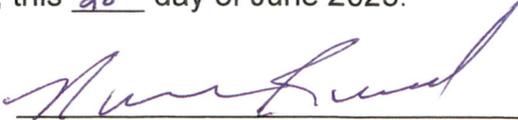
Section 3: City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

Section 4: If a conflict arises between the provisions of this Resolution and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are amended, superseded, and replaced, and this Resolution shall govern.

Section 5: If any section, subsection, paragraph, sentence clause, phrase, or portion of this Resolution is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Resolution.

[Intentionally left blank, signature page follows.]

PASSED, ADOPTED, APPROVED, and RATIFIED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this 28th day of June 2023.



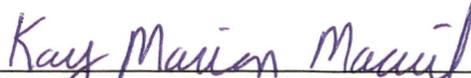
Nieves Riedel, Mayor

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

ADOT CAR No.: IGA 22-0008907-1
AG Contract No.: P0012023000585
Project Location/Name: Cesar Chavez
Boulevard
Type of Work: Road & Pedestrian
Improvements, Drainage
Federal-aid No.: SLS-0(203)A
ADOT Project No.: SZ018 01D 03D
TIP/STIP No.: SAN-12-07C
CFDA No.: 20.205 - Highway Planning and
Construction
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SAN LUIS

THIS AGREEMENT ("Agreement") is entered into this date July 12, 2023, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 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" or "Local Agency"). The State and the Local Agency are each individually referred to as a "Party" and are collectively referred to as the "Parties."

I. RECITALS

1. The State is empowered by A.R.S. §§ 28-401 and 28-339 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Local Agency is empowered by A.R.S. §§ 48-572 and 28-339 to enter into this Agreement and has by resolution, if required, 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 Local Agency.
3. The federal Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58 (November 15, 2021), created multiple new federal grant programs for surface transportation purposes to be administered by the US Department of Transportation. IIJA is currently authorized through September 30, 2026. Congress may extend IIJA prior to passing a new long-term highway program authorization, and these extensions may extend the September 30, 2026 deadline.
4. The Arizona State Match Advantage for Rural Transportation (AZ SMART) Fund was established by the Arizona State Legislature in Laws 2022, Chapter 322 House Bill 2872 which became effective on September 24, 2022 to assist eligible cities, towns, counties and ADOT in applying for and winning federal grants for surface transportation projects.

IGA 22-0008907-I

5. The work proposed under this Agreement consists of the design of roadway improvements along Cesar Chavez Boulevard from Escondido Street to Avenue E, (the "Project"). The Project includes reconstructing Cesar Chavez Blvd currently two-lane to a four-lane with raised center median. The Project roadway will have curbs, gutter, storm drains and two retention basins, traffic signals, one roundabout, continuous bicycle lanes, sidewalks, and streetlights, fiber conduits. The Local Agency has received funding through the Fiscal Year (FY) 2023 Allocation of Highway Infrastructure Programs (HIP) Congressional Directed Spending Projects (Earmarks) and funding through AZ SMART for the design of the Project. The Project cost, shown in Exhibit A, is estimated at \$4,059,969.00, which includes federal Earmarks, AZ SMART funds, and the Local Agency's share. The State will administer the design. Preliminary design and right of way acquisition for the Project are addressed in IGA 11-206-I and Amendment One and IGA 22-0008867-I addresses legislative appropriation funds for the Project. The construction phase of the project will be addressed in a separate agreement.
6. The interest of the State in this Project is the acquisition of federal Earmarks for the use and benefit of the Local Agency and authorization of such federal Earmarks for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.
7. The foregoing Recitals and Exhibit A shall be incorporated into this Agreement.

In consideration of the mutual terms expressed herein, the Parties agree as follows:

II. SCOPE OF WORK

1. The Parties agree:
 - a. The Project will be completed, accepted, and paid for in accordance with the requirements of the Project plans and specifications.
 - b. The Local Agency was awarded Design and Other Engineering Services (DOES) funds from the AZ SMART on March 17, 2023, as shown on Exhibit A. The federal grant application for construction of the Project must be submitted by the Local Agency prior to the passage of a new long-term highway program authorization that succeeds the IIJA, which is currently authorized through September 30, 2026. Congress may extend IIJA prior to passing a new long-term highway program authorization, and these extensions may extend the September 30, 2026 deadline. Federal grant awards will require the execution of a federal grant agreement.
 - c. To adhere to A.R.S. § 28-339.
 - d. The award of the AZ SMART Funds for the Project does not guarantee additional funding will be provided to the Local Agency to cover cost overruns, increases, or other overages.

IGA 22-0008907-1

- e. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the Local Agency is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final Project design 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 earmark funds will be returned to FHWA, and any remaining AZ SMART funds will be returned to the State. The Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.
- f. The Project will be completed in accordance with the memorandum dated March 21, 2023, shown in Exhibit B, attached and made part of this Agreement.

2. The State will:

- a. Execute this Agreement, and if funds for the Project are available, be the Local Agency's designated agent for the Project.
- b. After this Agreement is executed, and prior to performing or authorizing any work, invoice the Local Agency for the Local Agency's share of the initial Project Development Administration (PDA) costs, estimated at \$9,975.00 and the Local Agency's share of the Project design costs, estimated at \$62,560.00. If PDA costs exceed the estimate during the development of design, notify the Local Agency, obtain concurrence prior to continuing with the development of design, and invoice the Local Agency as determined by ADOT for additional costs to enable continuing PDA for the Project. If design costs exceed the estimate prior to completion of design, invoice the Local Agency for Project costs exceeding design. After the Project costs are finalized, invoice or reimburse the Local Agency for the difference between actual costs and the amount the Local Agency has paid for PDA and design.
- c. After receipt of the PDA costs and the Local Agency's estimated share of the Project design costs, on behalf of the Local Agency, prepare and provide all documents pertaining to the design and post-design of the Project, incorporating comments from the Local Agency, as appropriate. Review and approve documents required by FHWA to qualify the Project for and to receive federal Earmarks. 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 design development of the Project.
- d. Submit all required documentation pertaining to the Project to FHWA with the recommendation that the maximum federal Earmarks programmed or appropriated for this Project be approved for scoping/design. Authorize the AZ SMART Fund award on the Project. 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 Earmarks and AZ SMART funds available, it is understood and agreed that the Local Agency will be responsible for any overage.

3. The Local Agency will:

- a. Designate the State as the Local Agency's authorized agent for the Project.
- b. Within 30 days of receipt of an invoice from the State, pay the Local Agency's share of the initial PDA costs, estimated at \$9,975.00 and the Local Agency's share of Project design costs, estimated at \$62,560.00. Agree to be responsible for actual PDA costs, if during the development of design, PDA costs exceed the initial estimate. Be responsible and pay for the difference between the estimated and actual PDA and design costs of the Project within 30 days of receipt of an invoice.
- c. Review the 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; provide design review comments to the State as appropriate.
- d. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by federal Earmarks or AZ SMART funding. Should costs be deemed ineligible or exceed the maximum Project funds available, it is understood and agreed that the Local Agency is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.
- e. 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 Right of Way Procedures 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 Local Agency, if applicable.
- f. As applicable, certify that the Local Agency has adequate resources to discharge the Local Agency'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)
- g. 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 Local Agency shall take all necessary steps to remove or prevent any such encroachment or use. Provide a copy of encroachment permits issued within the Project limits to the State.
- h. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter Local Agency rights of way, as

IGA 22-0008907-I

required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Local Agency rights of way. This temporary right will expire with completion of the Project.

- i. 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.
- j. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Local Agency 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 Local Agency. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.
- k. Submit an application to an appropriate federal discretionary grant program for the construction phase of the project before September 30, 2026.

III. MISCELLANEOUS PROVISIONS

1. **Effective Date.** This Agreement shall become effective upon signing and dating of all Parties.
2. **Amendments.** Any change or modification to the Project will only occur with the mutual written consent of both Parties.
3. **Duration.** 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.
4. **Cancellation.** This Agreement may be cancelled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the Local Agency terminates this Agreement, the Local Agency 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 Local Agency terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.
5. **Indemnification.** The Local Agency 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 Local Agency, 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 Local Agency'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 Local Agency which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Local Agency's obligations under this paragraph shall survive the termination of this Agreement.

6. Liability. ADOT assumes no liability or financial responsibility for AZ SMART Fund Projects or the information submitted by the Local Agency. The Local Agency is solely responsible for complying with all applicable laws, rules and regulations, for any additional funding required to complete the Project(s) and for any claims due to delays, change orders or any other circumstances.
7. Programmed Federal Funds. The cost of the Project work under this Agreement is to be covered by the federal funds programmed or appropriated for this Project, up to the maximum available. The Local Agency acknowledges that actual Project costs may exceed the maximum available amount of federal Earmarks, or that certain costs may not be accepted by FHWA as eligible for federal Earmarks. Such costs are also ineligible to be reimbursed from AZ SMART fund awards. Therefore, the Local Agency agrees to pay the difference between actual costs of the Project and the federal Earmarks and AZ SMART Funds received.
8. Termination of Federal Funding. Should the federal Earmarks 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.
9. Indirect Costs. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.
10. 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 Local Agency 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.
11. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.
12. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.
13. Conflicts of Interest. This Agreement may be cancelled in accordance with A.R.S. § 38-511.
14. Inspection and Audit. The Local Agency shall retain all books, accounts, reports, files and other records relating to this Agreement which shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the Project. Such records shall be produced by the Local Agency, electronically or at the State office as set forth in this Agreement, at the request of ADOT.

15. **Non-Discrimination.** 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, as amended by Executive Order 2023-01, 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. **Arbitration.** In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.
18. **E-Verify.** The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.
19. **Contractor Certifications.** The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §35-393.01 and 35-394.
20. **Other Applicable Laws.** The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.
21. **Notices.** All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered electronically, in person, or sent by mail, addressed as follows:

For Agreement Administration:

Arizona Department of Transportation
Joint Project Agreement Group
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of San Luis
Attn: Jenny Torres
1090 E. Union Street (in-person)
PO Box 1170 (by mail)
San Luis, AZ 85349
JTorres@sanluisaz.gov

For Project Administration:

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

City of San Luis
Attn: Eulogio Vera
1090 E. Union Street (in-person)
PO Box 1170 (by mail)
San Luis, AZ 85349
928.341.8577
EVera@sanluisaz.gov

For Financial Administration:

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

City of San Luis
Attn: Monica Castro
1090 E. Union Street (in-
person)
PO Box 7740 (by mail)
San Luis, AZ 85349
928.341.8542
mcastro@sanluisaz.gov

22. **Revisions to Contacts.** Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.
23. **Legal Counsel Approval.** In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form is set forth below.
24. **Electronic Signatures.** This Agreement may be signed in an electronic format using DocuSign.

Remainder of this page is intentionally left blank.

(Signatures begin on the next page)

IGA 22-0008907-I

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon the full completion of signing and dating by all Parties to this Agreement.

CITY OF SAN LUIS

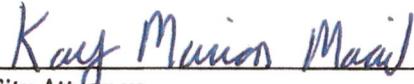
By  Date 6/28/2023
NIEVES RIEDEL
Mayor

ATTEST:

By  Date 6/28/2023
SONIA CORNELIO
City Clerk

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 A.R.S. §§ 11-951 through 11-954 and A.R.S. § 48-572 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. Approved as to Form:

By  Date June 29, 2023
City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

DocuSigned by:

By _____ Date 7/11/2023
200F20BDD0BC4A2...
STEVE BOSCHEN, PE
Infrastructure Delivery and Operations Division
Division Director

A.G. Contract No. P0012023000585 (ADOT IGA 22-0008907-I), an Agreement between public agencies, the State of Arizona and the City of San Luis, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. § 28-401, 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.

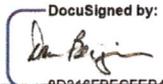
DocuSigned by:

By _____ Date 7/12/2023
00010FDE0FED476...
Assistant Attorney General

EXHIBIT A
Cost Estimate

SZ018 01D/03D

The Project costs are estimated as follows:

ADOT Project Development Administration (PDA) Cost:

Federal Earmarks @ 94.3%	\$ 165,025.00
Local Agency's 5.7% match	<u>\$ 9,975.00</u>
Subtotal - PDA	\$ 175,000.00

Scoping/Design:

Federal Earmarks	\$ 1,034,975.00
Local Agency's 5.7% match	\$ 62,560.00
AZ SMART Funds	<u>\$ 2,787,435.00</u>
Subtotal - Scoping/Design	\$ 3,884,970.00

Estimated TOTAL Project Cost	\$ 4,059,970.00
-------------------------------------	------------------------

Total Estimated Local Agency Funds	\$ 72,535.00
Total Federal Earmarks	\$ 1,200,000.00
Total AZ SMART Funds	\$ 2,787,435.00