



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

NO. 679

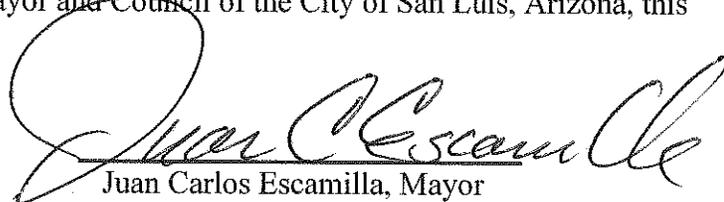
A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY CLERK TO ATTEST TO THE AGREEMENT FOR TECHNICAL ASSISTANCE BETWEEN THE CITY OF SAN LUIS AND THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF THE ARIZONA.

WHEREAS, the city is desirous of the Water Infrastructure Finance Authority to provide financial assistance for a feasibility study for a regional solid waste and sludge waste biogeneration facility.

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

THAT, Juan Carlos Escamilla, the City's Mayor, is authorized to execute, and Sonia Sanchez, City Clerk, to attest to, on behalf of the City of San Luis, Arizona, that certain document entitled "AGREEMENT FOR TECHNICAL ASSISTANCE BETWEEN THE CITY OF SAN LUIS AND THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA".

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 26 day of July, 2006.

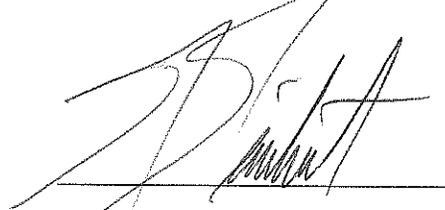

Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Sanchez, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut, City Attorney

AGREEMENT FOR TECHNICAL ASSISTANCE

BETWEEN CITY OF SAN LUIS

AND

**THE WATER INFRASTRUCTURE FINANCE
AUTHORITY OF ARIZONA**

THIS AGREEMENT is made and entered into on this 26th day of July, 2006, by and between City of San Luis herein after referred to as ("Applicant"), and the Water Infrastructure Finance Authority of Arizona ("WIFA.").

RECITALS

- A. Applicant has previously made a written application for technical assistance from WIFA.
- B. WIFA is a body corporate and politic, created by A.R.S. § 49-1201 et seq. WIFA has the authority, among other things, to provide technical assistance to political subdivisions, special districts and Indian tribes through staff and other professional assistance, as well as the power to hire professional assistance as need to carry out the provisions of the applicable statute. A.R.S. §§ 49-1223 and 49-1243.
- C. The Applicant is eligible to receive technical assistance from WIFA pursuant to A.R.S. §§ 49-1223 and 49-1243.
- D. WIFA has approved Applicant's request for technical assistance to the extent set forth in this agreement.

AGREEMENTS

- 1. Technical Assistance

WIFA and the Applicant agree that the technical assistance to be provided is fully described in the attached Scope of Work, which is attached as Exhibit A and fully incorporated herein by reference. Unless otherwise expressly set forth in the attached Scope of Work, the assignment of staff or other professional assistance to perform the Scope of Work shall be within the discretion of WIFA, as will the timing of such work. WIFA will cooperate with the Applicant to identify the members of the staff or other professional assistance that will be provided to perform the tasks identified on the Scope of Work, but WIFA reserves the right to change such staff or other professional assistance assignment to this particular project.

2. Financial Limitation on Technical Assistance

The WIFA Board of Directors at its meeting held on June 21, 2006 approved an award for technical assistance to the Applicant of an amount not to exceed \$35,000 with a minimum local match requirement of \$10,000. Under no circumstances will WIFA have any obligation to expend any amounts in excess of the award amount in connection with this Agreement and the attached Scope of Work.

3. Rights and Obligations of WIFA

WIFA will issue a written authorization to proceed with the work described in the Scope of Work within a reasonable time after the effective date of this Agreement. Neither WIFA staff nor the assigned consultant shall proceed with any work whatsoever without such authorization. The written authorization shall set forth the date of expected commencement of the work and the schedule of progress and completion.

4. Assignment of Staff and Other Personnel

WIFA shall have the full power, in its sole discretion, to assign the personnel to provide the technical assistance called for in this Agreement. These personnel assignments may be changed by WIFA from time to time, upon written notice to the Applicant. In order to enhance the orderly provision of technical assistance, WIFA shall identify to the Applicant the project manager to be empowered to act for the staff or other professional assistance designated to perform the technical assistance described in this Agreement. The Applicant shall work with the assigned project manager and on matters relating to the technical assistance and of services to be provided under this Agreement. WIFA may change its designation of a project manager from time to time in its sole discretion, upon written notice to Applicant.

5. Maintenance of Documents and Records

WIFA will make available to the Applicant copies of reports, specifications and drawings prepared under the terms of this Agreement as set forth in the attached Scope of Work. WIFA is entitled to keep originals or copies of such documents for its own files. The Applicant shall retain all data, books and other records ("records") relating to the performance to this Agreement for a period of five years after completion of this Agreement. All records shall be subject to inspection and audit by the State of Arizona at reasonable times. Upon request, the Applicant shall produce the original of any or all such records within its possession. The Applicant shall in all ways comply with A.R.S. §§ 35-214 and 35-215.

6. Work Schedule

WIFA and the Applicant have agreed on a tentative work schedule for performance of the Scope of Work. WIFA shall have the ability to modify this work schedule after consultation with the Applicant. If the Applicant wishes to make any amendment or modification to the attached work schedule, the Applicant will make a written request to WIFA, stating the specific modification requested and the reasons therefore. WIFA and the Applicant agree to cooperate with each other in making reasonable and necessary modifications to the work schedule, but in case the parties cannot agree,

WIFA shall have the ability, in its sole discretion, to modify or amend the work schedule or to refuse to do so.

7. Responsibility of Outside Consultant

If WIFA assigns any person other than WIFA staff to provide technical assistance, the person or entity providing such professional assistance shall be fully responsible and liable for the completeness and accuracy of all work, plans and supporting data prepared or compiled under the Scope of Work for this project. The provision of technical assistance by WIFA does not create any liability for WIFA or the State of Arizona regarding the design, construction or operation of any infrastructure project.

8. Non-Availability of Funds

Every payment obligation of WIFA and/or the State of Arizona under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by WIFA and/or the State of Arizona at the end of the period for which funds are available. No liability shall accrue to WIFA or the State in the event this provision is exercised, and neither WIFA nor the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the State, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. A cancellation made pursuant to this provision shall be effective when the Applicant receives written notice of the cancellation unless the notice specifies a later time.

10. Non-Discrimination

The Applicant shall comply with Executive Order 75-5, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Applicant shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

11. Third Party Antitrust Violations

The Applicant assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Applicant toward fulfillment of this Agreement.

12. Arbitration

The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, but only to the extent required by A.R.S. § 12-1518 except as may be required by other applicable statutes.

13. Effect of Delays or Failure of Performance

Any delay in or failure of performance under this Agreement which is caused by circumstances beyond the reasonable control of the party concerned, including but not limited to acts of God, strikes, fires, floods, explosions, riots, wars, rebellions or sabotage shall not give rise to any claim for damages on the part of any party, nor shall such be deemed a material default of this Agreement. If the performance of the Scope of Work is delayed by any such circumstances, the estimated time for the performance of the Scope of Work will be extended by a period equivalent in time to the duration of such delay. The party first learning of the substantial possibility of any such delay shall promptly notify the other party of such circumstances in writing. The parties will cooperate with the staff or other professional assistance to develop an estimate of the expected duration of the delay. The parties will endeavor in good faith to reach agreement on the appropriate extension required by the delay, but if the parties are unable to reach agreement, WIFA shall have the ability to set a reasonable period for the extension. In case the performance of the Scope of Work is rendered substantially impossible by some unforeseen circumstance of the sort described above, the parties will confer and endeavor to reach agreement about whether this Agreement should be terminated because its purpose has been frustrated.

14. Effect of Abandonment of Project

The Applicant agrees to promptly inform WIFA if the Applicant shall decide to abandon the project described in its written application for technical assistance from WIFA. In that case, WIFA shall discontinue the technical assistance described in this Agreement. All reports, specifications, drawings and other work product produced as a result of the technical assistance, including partially-completed work product, shall be handled as provided in Paragraph V above.

15. Remedy Limitation

Anything to the contrary in this Agreement notwithstanding, the Applicant agrees that it shall have no ability to maintain a legal action for the recovery of monetary damages for any claims arising out of or relating to this Agreement against the State of Arizona, WIFA, and their respective agents, attorneys, employees and officers.

16. Governing Law

This Agreement and all obligations of the parties hereto shall be interpreted under the laws of the State of Arizona.

17. Costs and Attorneys Fees

In case of any litigation in connection with any controversy arising out of this Agreement, The prevailing party shall be entitled to recover in addition to its taxable costs such sum as the Court may adjudge reasonable as attorneys fees.

18. Interpretation

The parties expressly request any reviewing court to interpret this Agreement according to the manifest intention of the parties hereto, which is to provide for technical assistance from WIFA to the Applicant in furtherance of WIFA's statutory rights and duties. If any portion of this Agreement shall be deemed unconstitutional or unlawful for any reason, the parties intend that the remaining provisions of this Agreement should remain in full force and effect unless the omission of the unlawful provision renders this Agreement unenforceable or frustrates its manifest intention.

19. Entire Agreement

This Agreement represents the entire agreement between WIFA and the Applicant as to the general subject matter set forth herein. Any prior or oral or written understandings shall be of no force or effect after the date of this Agreement. The parties intend by this Agreement to displace and nullify any such prior understandings or agreements. This Agreement may be modified and amended, but only in writing signed by both parties.

20. Effective Date

The parties agree that it is their intention that this Agreement be effective on and from the day and year first written above, even if that date may vary from the date of actual signature.

Water Infrastructure Finance Authority

By: Jay R. Spector

Its: Executive Director



City of San Luis

By: LEE MANESS

Its: CITY MANAGER