



Resolution

RESOLUTION NO. 923

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 Transportation Enhancements activities for US Hwy 95 from 'A' Street to Juan Sanchez Blvd. for a project within the boundaries of the City; 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.

PASSED AND ADOPTED by the Mayor and City Council of the City of San Luis, Arizona, this 9th day of March, 2011.


Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut, City Attorney

ADOT File No.: IGA/JPA 10-157-J
AG Contract No.: P001 2011 000562
Project: Landscape, Street furniture and
sidewalks/crosswalks
Section: Both sides of US95, from 'A'
Street to Juan Sanchez Blvd.
Project No.: TEA 095-A(203)A
TRACS No.: H8017 01C/01D
COG TIP Item No.: FY 2010-2013 STIP
Amendment #8, Table 10
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SAN LUIS

San Luis
THIS AGREEMENT is entered into this date _____, 2011, 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 ~~BISBEE~~, 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. Congress has authorized appropriations for, but not limited to twelve eligible categories of Transportation Enhancement (TE) activities. The State has requested SAFETEA-LU funds from the Federal Highway Administration (FHWA) for a project within the boundary of the City and described more fully below in Paragraph 5 of these Recitals.
 4. Such project lies within the boundary of the City and has been selected by the City, the survey of the project has been completed. The plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
 5. The State will design and install enhancements along both sides of US 95 within City limits, from 'A' Street to Juan Sanchez Blvd. Related enhancements include, but are not limited to, sidewalks with ADA-compliant ramps, crosswalks, landscaping & irrigation, street furniture and pedestrian lighting. Upon completion of the project improvements by the State, the City will provide maintenance and electrical power for irrigation and lighting facilities, collectively hereinafter referred to as the "Project."
 6. The interest of the State in this project is the acquisition of Federal funds for the Project under this Agreement. The State Board of Transportation has approved \$1,146,426.00, and the State is requesting the funds be authorized for the Project pursuant to Federal law and regulations.
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7. Parties hereby agree to and acknowledge the following conditions: **a)** any estimated monetary amounts referenced in this Agreement are subject to change and can change significantly before completion of the Project. Additionally, 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; **b)** the Parties shall perform their responsibilities consistent with this Agreement; and **c)** any change or modification to the Project will only occur with the mutual written consent of both Parties.

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

II. SCOPE OF WORK

1. The State will:

a. Submit a program to FHWA containing the above-mentioned Project with the recommendation that it be approved for design and construction funding. Request the maximum Federal funds programmed for this Project, including construction engineering and contingency costs.

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

c. Advertise for bids and award one or more construction contract(s) for the Project. Administer contract(s) for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by either Project delays or construction management decisions attributable to the State.

d. Invoice the City for costs attributable to any engineering change orders requested by the City and upon acceptance by the State. Funding from the City for such costs must be received by the State prior to the execution of any work indicated in the engineering change orders.

e. Not be obligated to maintain the Project, should the City fail to budget or provide for perpetual maintenance as set forth in this Agreement.

f. Upon completion of the Project, perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the project documents and the Project has been satisfactorily completed.

2. The City will:

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

b. Agree any costs attributable to any engineering change orders requested by the City shall be the sole responsibility of the City for payment, which the City will remit to the State within thirty (30) days upon receipt of any invoice. Said payments shall be received by the State prior to the execution of any work indicated in the engineering change orders. Be responsible for any contractor claims for additional compensation caused by Project delays attributable to the City.

c. Hereby 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.

d. Upon completion of construction, the City shall provide for at its own cost, perpetual maintenance of improvements of all Project improvements within Project limits.

e. Agree that maintenance shall include care of all landscaping within the Project limits in accordance with accepted horticultural practices. This includes keeping all areas free of weeds, undesirable grasses and litter, furnishing irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed and established at the completion of the Project. Be responsible for all testing, adjusting, repairing and operation of the irrigation system, including the electricity to power the irrigation controller.

f. Provide perpetual maintenance and emergency repairs, including, but not limited to, keeping the sidewalk and ramp surfaces and surrounding areas free of all debris and doing any repairs that might be necessary to keep the sidewalk, any safety railing and retaining walls compliant with the Americans with Disabilities Act Accessibility (ADA) Guidelines. Maintenance also is to include routine inspection and repairing pedestrian lighting when required, and provide electricity to power said lighting.

g. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

h. Obtain, per established procedures of the State's Yuma District Permit Office, a valid blanket Encroachment Permit for the routine/normal maintenance and emergency maintenance work provided by the City within the State's rights of way. Agree, any new construction or installation shall require a separate permit as per the Yuma District's established procedures. The City agrees all activities performed by the City under this Agreement shall be set forth in and covered by the appropriate Encroachment Permit.

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, except any provisions for electricity, water or maintenance and indemnification shall be perpetual. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs or other expenses (including, but not limited to, reasonable attorneys' fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), property damage and any other claims (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

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

4. The City and the State (ADOT) 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 (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

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

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

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

8. 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".

9. 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.

10. 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.

11. 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: Public Works Department
PO Box 1170
San Luis, Arizona 85349
(928) 341-8577
(928) 341-1075 Fax

ADOT Transportation Enhancement & Scenic
Roads Section
1615 W. Jackson St. MD EM10
Phoenix, AZ 85007
(602) 712-6258
(602) 712-3347 Fax

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(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. Pursuant 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.

16. 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

By



JUAN C. ESCAMILLA
Mayor

STATE OF ARIZONA

Department of Transportation

By

SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

ATTEST:

By



SONIA CUELLO
City Clerk

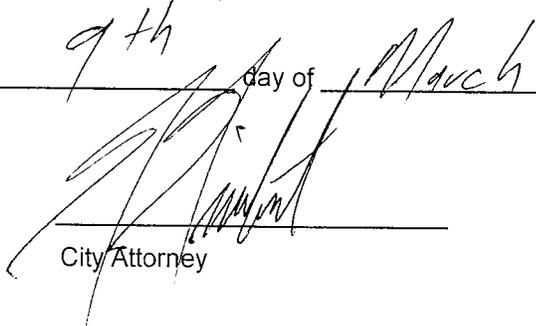
Initial Draft 12/3/10 ghc
Draft 2 ghc 2/2/11
AG approved 2/10/11

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 A.R.S. § 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 March, 2011.



City Attorney