



# Resolution

NO. 969

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 that consists of preparing plans for the widening of Avenue 'E' from the existing two lane road to a four lane road complete with curb, gutter, sidewalk and storm drainage. This project will be from the roundabout at Port of Entry II north two miles to SR195; and

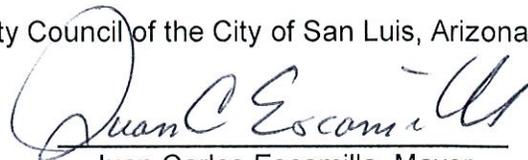
Whereas, the parties to the Intergovernmental Agreement desire to enter into said agreement;

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.

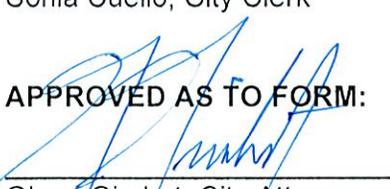
14<sup>th</sup> PASSED AND ADOPTED by the Mayor and City Council of the City of San Luis, Arizona, this day of March, 2012.

  
Juan Carlos Escamilla, Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Cuello, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Glenn Gimbut, City Attorney

ADOT File No.: IGA/JPA 11-207I  
AG Contract No.: P0012012000336  
Project: Avenue E Roadway Widening  
Section: County 25th Street to SR195  
Federal Project No.: SLS-0(201)A  
ADOT Project No.: SZ01603D  
YMPO TIP No.: SAN-12-08D  
Budget Source Item No.: NA

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SAN LUIS

PLEASE DO NOT ENTER

**THIS AGREEMENT** is entered into this date \_\_\_\_\_, 2012, 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" or "ADOT") 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 preparing final design documents and project clearances for widening an existing two lane roadway to four lanes, hereinafter referred to as the "Project". The work will include design principles, elements, and features associated with traffic signals, roundabouts, drainage improvements, and roadway widening. The State will administer the design of the Project.
  4. The plans, estimates, and specifications for the Project will be prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval. 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.
  5. The City, in order to obtain federal funds for the design 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.
  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 design of the Project. The estimated Project costs are as follows:

**SZ016 03D (design):**

Federal-aid funds @ 94.3% (capped)	\$ 220,000.00
City's match @ 5.7%	\$ 12,540.00
Design review fee (SZ016 01D)*	\$ <u>10,000.00</u>

<b>TOTAL Project Cost</b>	<b>\$ 242,540.00</b>
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**Summary:**

<b>Total Estimated City Funds</b>	<b>\$ 22,540.00</b>
<b>Total Federal Funds</b>	<b>\$ 220,000.00</b>

\* (Included in the City Estimated Funds)

The Parties acknowledge that the final design amount 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 amount is less than the initial estimate, the difference between the final 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 design 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, and prior to performing or authorizing **any** work, invoice the **City** for the State's design review fee, currently estimated at **\$10,000.00** and the City's estimated share of the design portion of the Project, currently estimated at **\$12,540.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the **City** for the difference between estimated and actual costs.

b. Upon receipt of the design review fee and the City's estimated share of the Project costs, currently estimated at **\$22,540.00**, the State will provide the design and submit pertaining documents to the FHWA to qualify the Project for and to receive federal funds. Such documents may consist of, but are not specifically limited to, environmental documents, including the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way requirements and activities and such other related tasks essential to the achievement of the objectives of this Agreement. Issue the right of way, material, environmental, and utility clearances after review and approval of the Consultant's project plan submittals.

c. Submit all documentation required to FHWA containing the above-mentioned Project with the recommendation that funding be approved for design. Request the maximum programmed federal funds for the design of this Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of Project plans and specifications.

d. Once the Project costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs. Deobligate or otherwise release any remaining federal funds from the design phase of the Project.

2. The City will:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Upon execution of this Agreement, 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 design review fee, currently estimated at **\$10,000.00** and the City's estimated share of the Project, currently estimated at **\$12,540.00**. Be responsible for any difference between the estimated and actual design review costs.

c. Allow the State 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 design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.

d. Enter into an agreement with the State 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 including, but not specifically limited to, right of way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management, if applicable.

f. 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.

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. De-obligate or otherwise release any remaining federal funds from the design phase of the Project.

h. 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.

i. 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 preconstruction related activities, including without limitation, temporary Rights-of-Entry to accomplish among other things, soil and foundation investigations.

j. 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. Payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

k. If applicable, provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

l. 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 ten (10) years after federal funds were first made available.

### **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 maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award 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 State shall in no way be obligated to maintain said Project. If the federal funding related to this Project is terminated or reduced by the federal government, or if 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.

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 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 work 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. The cost of the project under this Agreement includes applicable indirect costs approved by the FHWA.

5. The City and State 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.

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

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

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. 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".

10. 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.

11. 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.

12. 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. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

**City of San Luis**  
Attn: John Starkey  
1090 E. Union Street  
San Luis, Arizona 85349  
(928) 341-8577  
jstarkey@cityofsanluis.org

**For Financial Matters:**  
**Vendor # 860376164 01**  
Katie St Louis, Finance Director  
PO Box 1170  
San Luis, Arizona 85349  
(928) 341-8520  
kstlouis@cityofsanluis.org

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

14. 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.

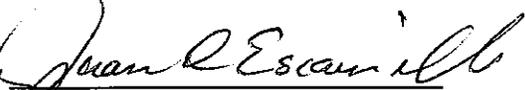
15. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

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.

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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 \_\_\_\_\_  
**DALLAS HAMMIT, P.E.**  
Deputy State Engineer, Development

ATTEST:

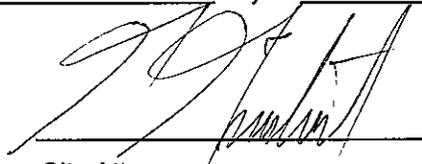
By   
**SONIA CUELLO**  
City Clerk

**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 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

  
\_\_\_\_\_  
City Attorney