

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
COCHISE COUNTY
AND
CITY OF DOUGLAS
REGARDING EFFORTS TO ACQUIRE RIGHT OF WAY FOR KINGS HIGHWAY TO
JAMES RANCH ROAD FOR PROJECTS RELATED TO THE
COMMERCIAL LAND PORT OF ENTRY
WEST OF DOUGLAS, ARIZONA**

This Intergovernmental Agreement (IGA) is entered into on this _____ day of _____, by and between **Cochise County**, hereinafter referred to as “County”, and **City of Douglas**, hereinafter referred to as “City”.

RECITALS

WHEREAS, the County and City support the General Services Administration (“GSA”) building a Commercial Land Port of Entry (“CLPOE”) in Cochise County to divert commercial traffic from the Raul H. Castro Port of Entry; and

WHEREAS, the City donated an 80 acre parcel 4.5 miles west of the City limits along the U.S./Mexico border through a donation acceptance agreement with GSA for construction of a new CLPOE and agreed to bring utilities and assist with the construction of the new CLPOE; and

WHEREAS, no existing all-weather roadway connects Kings Highway to James Ranch Road and to the site of the proposed CLPOE; and

WHEREAS, the purpose and intent of this IGA is to coordinate funding the Right of Way acquisition from Kings Highway to James Ranch Road for the purpose of establishing a future connector road into the new James Ranch Road and to establish a utility corridor to supply the new commercial port of entry.

WHEREAS, the Cochise County Board of Supervisors (“Board”) and the City of Douglas (“City”) have provided resources toward the planning and execution of this major project; and

WHEREAS, to facilitate the intent and purpose of this IGA, necessary information, stakeholder collaboration and partnerships, and other resources from the City and County may be needed for the acquisition of Right of Way between the new James Ranch Road and ~~on~~ Kings Highway (“Kings Highway Right of Way Project”); and

WHEREAS, the County possesses road jurisdiction to apply for opportunities that can provide resources to assist in completing the Kings Highway Right of Way Project; and

WHEREAS, the City possesses city utility infrastructure, capacity for specific match

funding through state and federal grant awards, technical and planning knowledge, and resources to assist the County in the Kings Highway Right of Way Project.

NOW THEREFORE, the County and City (collectively the “Parties”) understand and agree as follows:

1. DURATION OF AGREEMENT

This Agreement shall commence on the Effective Date and shall remain in effect until the end of the Federal Government’s right to audit and require the return of any misspent funds.

2. PURPOSE

The purpose of this IGA is for the City of Douglas and Cochise County to work together and along with state and federal agencies to acquire Right of Way from Kings Highway to James Ranch Road for the purpose of establishing a future connector road and to establish a utility corridor to the new commercial port of entry. The City’s intent is to work with the County to establish a utility corridor and a future right of way that will allow future development to hook up to City services and annex those parcels in the future. The City agrees to undertake on behalf of the County and subject to County approval all necessary and reasonable efforts, defined as utilizing all available legal mechanisms including negotiation, condemnation, and eminent domain, to secure the ROW as described herein.

3. CITY’S ROLE

General

- The City shall use reasonable efforts to acquire a 150 foot wide right of way beginning at the intersection of Kings Highway and Puzzi Ranch Road Kings Highway and continuing south until the southern end of APN 408-34-013, continuing west to approximately 100 feet east of the western T24S R27E S18 section line, as more specifically shown on the map in Exhibit A, which is attached hereto and incorporated herein by reference. The City shall, on behalf of the County, acquire the ROW upon ~~purchase~~ project completion.
- The City will conduct and fund a Phase I Environmental Site Assessment (ESA) for the Right-of-Way (ROW), following the ASTM E1527-21 standard. A qualified environmental professional will perform the assessment, and the final report will be submitted to the County for review and approval.
- The City shall conduct a cultural resource assessment of the proposed Right-of-Way (ROW) corridor to identify any potential archaeological or historical sites. This assessment shall be performed by a qualified professional in accordance with applicable federal and state guidelines. If the assessment identifies significant cultural resources, the City shall coordinate with the appropriate agencies to determine necessary mitigation measures.

4. COUNTY’S ROLE

General

- The County shall accept the transfer of the ROW..
- The County shall allow a utility corridor within the ROW for the City's sewer line as well as any future electric, gas, water and broadband infrastructure through the County's permitting process.
- The County shall provide a surveyor that will provide legal descriptions of the ROW corridor.
- The County shall collaborate with the City on any County rezoning within the area subject to this agreement to include a requirement for parcel owners to donate the ROW to the County.

5. Record Retention

Each party shall retain records and documents relating to the performance of services under this IGA following the Arizona state retention policy relevant to each document. Each party shall comply with the Arizona State Library, Archives and Public Records (LAPR) requirements regarding records-retention duties.

6. No Employment Relationship

It is clearly understood that each party will act in its individual capacity and not as an agent or employee of the other. Any employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. Each party shall be solely responsible for control of payment of salary (including withholding for payment of taxes and social security), workers' compensation, and disability benefits.

7. Conduct of Operations

The County and City agree to be responsible for the conduct of its operations and performance of obligations and the actions of its own personnel while performing services under this IGA. Each party shall be solely responsible for supervision and daily direction. Each party agrees to assume responsibility for the conduct of its employees, officials, and agents and for all claims, demands, suits, damages, and loss which result from the negligence or intentional torts of such party or its agents, officials, and employees in the performance of this IGA. The extent of the foregoing liabilities shall be limited to, and determined by, the respective fault of the Parties in comparison with others, including, but not limited to the other party who may have contributed to, or in part caused any such claim to arise. In addition, both Parties agree to always maintain adequate professional and general liability insurance coverage while this IGA is in effect.

8. Indemnification

To the fullest extent permitted by law, each party to this IGA agrees (as indemnitor) to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorneys' fees) arising out bodily injury

of any person (including death) or property damage, but only to the extent that such claims which result in vicarious or derivative liability to the indemnitee, are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers. The extent of the foregoing liabilities shall be limited to and determined by the respective fault of the Parties, their agents, subcontractors, and employees in comparison with others (including but not limited to the other party) who may have contributed to or in part caused any such claim to arise.

9. Assignments

This IGA is non-assignable in whole or in part by either party without the written consent of the other party.

10. Dispute Resolution

The Parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any dispute arising under this IGA must first be presented in writing, with supporting documentation, to the agent of the other party. The Parties' agents shall make a good faith effort to resolve any disputes. Disputes that cannot be resolved at this level shall result in written notice of termination pursuant to the termination provisions of this IGA.

11. Termination

Either party may terminate this IGA with or without cause upon providing thirty (30) days' written notice to the other party. When there are pending co-sponsored funding applications, Parties agree to complete the application process. In the event either party provides notice of its intent to terminate this IGA, upon termination, the other party at its sole discretion may discontinue all services and obligations under this IGA upon deciding that it is in the best interest of the party to do so. In the event of termination, each party shall deliver or otherwise make available to the other party, copies of such information and materials that may have been prepared in the performance of this IGA.

12. Miscellaneous Provisions

a. Authority of Signatory

Each individual executing this IGA on behalf of either party represents and warrants that he/she is duly authorized to execute and deliver this IGA on behalf of the County or City.

b. Compliance with Laws

The Parties shall comply with all applicable federal, state, and local laws, rules, regulations, standards, and Executive Orders, without limitation to those designated within this IGA.

c. Non-Discrimination

In performance of this IGA the Parties shall not discriminate against any County employee or City

employee, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin while carrying out their duties pursuant to this IGA. The Parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.

d. Cancellation

This IGA is subject to cancellation for conflict of interest without penalty or further obligation, as provided by A.R.S. § 38-511.

e. Entire Agreement

This IGA and any attachments represent the entire agreement between City and County, and supersede all prior negotiations, representations, or agreements, whether express or implied, written, or oral.

f. Governing Law and Venue

The terms and conditions of this IGA shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this IGA shall be tried in the Superior Court of Cochise County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this IGA or to recover any damages for on account of the breach of any term or conditions of this IGA, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

g. Incorporation of Documents

All documents referred to in this IGA are hereby incorporated by reference into the IGA.

h. Integration

This IGA contains the entire arrangement between the Parties. No statement, promise or inducement made by either party that is not contained in this written IGA and signed by both Parties shall be valid or binding.

i. No Third-Party Beneficiaries

Only the Parties may enforce this IGA. The Parties do not intend to confer enforceable rights on any non-party through this IGA and do not intend to create any third-party beneficiaries to this IGA.

j. Section Headings

Captions and section headings used herein are for convenience only, are not a part of this IGA,

shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this IGA.

k. Severability

The provisions of this IGA shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provisions.

l. Waiver of Terms and Conditions

The failure of either party to insist on any one or more instances of performance of any of the terms of conditions of this IGA or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights, or privileges, and they shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties to this IGA have respectively caused this IGA to be executed on the date herein indicated.

**Cochise County, Arizona, a political
subdivision of the State of Arizona**

City of Douglas

By: _____
Frank Antenori, Chairperson
Cochise County Board of Supervisors

By: _____
Jose Grijalva
Mayor, City of Douglas

Date: _____

Date: _____

This IGA has been reviewed by the undersigned counsel who has determined that it is in appropriate form and within the powers and authority granted to the Cochise County Board of Supervisors.

By: _____
Paul Correa, Deputy County Attorney

Date: _____

Attestation

By: _____
Lara Loewenheim, Clerk
Cochise County Board of Supervisors

