

DONATION ACCEPTANCE AGREEMENT

This Donation Acceptance Agreement (“Agreement”) is made as of this ____ day of _____, 2023 (“Effective Date”), by and between the City of Douglas, an Arizona municipal corporation (“Donor”), and the United States of America, acting by and through the Administrator of General Services and authorized representatives (“United States” or “GSA”) (collectively, the “Parties” and each individually, a “Party”).

The purpose of this Agreement is to memorialize the understanding of the Parties regarding a proposed donation to the United States of approximately 80 acres of unimproved land located in Douglas, Arizona (APN 407-69-004A) (the “Property”), as more particularly described in the Legal Description, attached hereto as Exhibit A and incorporated herein by reference, and further identified as Lot _____ on a Survey prepared by Cochise County, dated _____, 2022, attached hereto as Exhibit B and incorporated by reference.

Donor wishes to donate the Property and the United States wishes to accept the Property subject to the terms and conditions set forth below.

Authority

GSA has the authority to accept this donation under, and 40 U.S.C. §§ 581(c)(1) and 3304(b). By delegation from the Administrator of General Services, authority to accept this donation has been granted to the Commissioner of Public Buildings in accordance with paragraph 2(d) of part 1 of chapter 5 of the *GSA Delegations of Authority Manual*, GSA Order PBS 5450.2 (August 5, 2020).

Consideration and Mutual Obligation

It is the agreement of the Parties and the intention and wish of Donor that the donation of the Property under this Agreement will constitute Donor’s binding obligation and will be enforceable at law and equity, including against Donor and Donor’s successors and assigns. Donor acknowledges that the United States is relying, and will continue to rely, on Donor’s donation being fully satisfied as set forth herein, that the United States is expending funds and staff time on this donation and that the United States is willing to accept the donation subject to the terms and conditions set forth in this Agreement. The United States agrees to accept the donation of the Property, provided the terms and conditions of this Agreement are met, utilities are provided by the dates required as stated herein below, upgrading and extension of James Ranch Road is completed by the date required as stated herein below, and all title and environmental conditions are satisfied prior to acceptance by the United States.

Points of Contact

For Donor

Ana Urquijo– City Manager
425 10th Street
Douglas, AZ 85607
520-417-7303
ana.urquijo@douglasaz.gov

For GSA:

Name
Title
Department
Address
Phone
Email

Terms and Conditions of the Agreement

1. Satisfactory Title and Title Evidence

For the Property to be acquired by voluntary conveyance, the title must be satisfactory to the Attorney General of the United States or a delegated representative of the Attorney General (“AG”). The United States will pay the expenses incident to the preparation and recordation of the deed. In the event that the title to the Property should be unsatisfactory, Donor agrees to deliver or cause to be delivered to the United States, at Donor’s sole cost and expense, such releases, affidavits or other non-liability title instruments as the AG may require to cure the title defects. Should Donor fail to cure the title defects within 60 days (or such extended period as the AG may allow) after receipt of written notice of such defects, the United States may elect to terminate this Agreement by giving written notice of termination to Donor. If the United States should give such notice of termination, the Agreement and the obligations incurred thereunder will be deemed terminated as of the date of such notice without liability by the United States.

The title when conveyed to the United States must be clear of all mineral rights and interests, easements, restrictions, and leases, except those that may be acceptable to the United States in its sole discretion.

Field Code Changed

2. Deed and Easements

Title to the Property will be conveyed to the United States by a General Warranty Deed, as shown in that certain form attached hereto as Exhibit C and incorporated herein by reference. The deed will be prepared by the United States and recorded at its own expense.

In addition to the donation of the Property, Donor will be building infrastructure for temporary utilities serving the Property consisting of on-site water, electrical and broadband (collectively, the "Temporary Utilities") by no later than March 31, 2024. Donor will also be building infrastructure for permanent utilities serving the Property consisting of water, fire, sewer, electrical, gas, and broadband conduit (collectively, the "Permanent Utilities") to be installed no later than May 31, 2027. ~~The utilities will not be located on the Property, nor will GSA require an easement for the utilities built. The interest in the Temporary Utilities and the Permanent Utilities will be conveyed by Donor to the United States by easements, as needed, as shown in that certain form attached hereto as Exhibit D and incorporated herein by reference.~~

3. Temporary Utilities and Permanent Utilities

The Temporary Utilities serving the Property consist of the infrastructure Donor will be building and the related services for on-site water, electrical and broadband. Donor will use reasonable efforts to work with the providers of the Temporary Utilities to expedite permitting and to ensure delivery by March 31, 2024. Donor will coordinate with GSA to provide only the type and quality of the Temporary Utilities needed and approved by the United States. The Temporary Utilities may be removed by Donor upon the completion of the Permanent Utilities with GSA's concurrence, which concurrence will not be unreasonably withheld.

The Permanent Utilities serving the Property consist of the infrastructure Donor will be building of adequate required size and the related services for water, fire, sewer, electrical, gas, and broadband. The infrastructure must be built and delivered in accordance with specifications to be communicated by GSA to Donor in a written notice separate from this Agreement. Donor will use its best efforts to work with the providers of the Permanent Utilities to expedite permitting and to ensure delivery by no later than May 31, 2027. Donor will coordinate with GSA to provide only the type and quality of the Permanent Utilities needed and approved by the United States. The Permanent Utilities will be located along, under or over, as required, an upgraded and extended James Ranch Road being constructed by the City or others, including but not limited to the Arizona

Department of Transportation (“ADOT”). If City is not constructing upgraded and extended James Ranch Road, then it ~~Donor~~ will coordinate and use its best efforts to work with others, including ADOT and other agencies, to upgrade and extend the road and ~~involved~~ for the placement of the Permanent Utilities.

Nothing contained in this Agreement restricts the ability of Donor to charge market fees, charges or rates for connection or usage of any of the Temporary Utilities or Permanent Utilities.

4. **Completion Deadline**

This Property, ~~along with the infrastructure for the Temporary Utilities and the Permanent Utilities, are is~~ being conveyed to the United States and its successors and assigns in connection with the construction of the new Douglas Land Port of Entry (the “Douglas LPOE”) serving commercial vehicles. Should the United States fail to commence construction of the new Douglas LPOE serving commercial vehicles within eight years of the Effective Date, then the ownership of and title to the Property ~~(and any related easements for the Temporary Utilities and the Permanent Utilities)~~ will automatically revert to and vest in Donor; provided however, that this right of reverter will terminate immediately upon GSA awarding the contract for the design of the new Douglas LPOE for commercial vehicles and the expenditures of any funds appropriated for the design or construction on the Property.

Donor will complete construction of the infrastructure required for the Temporary Utilities to serve the Property so that service is available for use by GSA no later than March 31, 2024, and will complete or cause others to complete the upgrade and extension of James Ranch Road so that it is available upgraded and extended by May 31, 2027. Donor will also complete construction of the infrastructure required for the Permanent Utilities to serve the Property no later than May 31, 2027. Donor acknowledges that without the Temporary Utilities delivered within the specified timeframe, construction of the new Douglas LPOE by the United States cannot begin. Further, Donor acknowledges that without the upgrade and extension of James Ranch Road and the Permanent Utilities delivered within the specified timeframe, the United States cannot operate the new Douglas LPOE for commercial vehicles. Donor will use its best efforts to coordinate with all providers of the Temporary Utilities and the Permanent Utilities to expedite delivery.

5. **Diminution in Value, Loss or Damage**

Donor agrees not to do, or permit others to do, any act by which the value of the

Field Code Changed

Property may be diminished or whereby the title to the Property may be encumbered. Donor further agrees that if any loss or damage to the Property, or to any part thereof, should occur from fire or acts of God or any other cause prior to the vesting of satisfactory title to the Property in the United States or delivery of possession, whichever occurs first, the loss or damage will be borne by Donor, and the United States may, without liability, refuse to accept conveyance of the Property.

Donor additionally agrees that if any loss or damage to the infrastructure for the Temporary Utilities or the Permanent Utilities, or both, or to any part thereof, should occur from fire or acts of God or any other cause prior to delivery of possession, the loss or damage will be borne by Donor, ~~and the United States may, without liability, refuse to accept the easements for Temporary Utilities or the Permanent Utilities, or both.~~

6. Extension of James Ranch Road

The Permanent Utilities serving the Property will run along, under or over and align with the newly constructed extension of James Ranch Road. Donor will ~~upgrade and extend James Ranch Road and/or~~ cooperate with and use its best efforts to assist ~~others, including but not limited to~~ ADOT, as ~~ADOT they~~ constructs and extends James Ranch Road to serve the Property, ~~which upgrade and extension will be completed by no later than May 31, 2027. To that end, Donor will use its best efforts to enter into a Memorandum of Understanding with ADOT and GSA outlining the milestones and completion dates for the road that are required by the United States.~~ Donor acknowledges that the United States cannot construct or operate the new Douglas LPOE without the extended and upgraded road and the Temporary Utilities and Permanent Utilities that will run along, under or over it and align with the extension.

7. Modification

This Agreement may be modified or amended only by a written, mutual agreement signed by both Parties.

8. Provisions Incorporated by Reference

- a. The provisions of the United States Code set forth at 18 U.S.C. § 431 (Contracts by Member of Congress) and 41 U.S.C. § 6306 (Prohibition on Members of Congress making contracts with the Federal Government), as such provisions may be revised from time to time, are hereby incorporated in this Agreement by this reference, as if set forth in full.

- b. The provisions of subsection 889(a)(1)(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232), as such provisions may be revised from time to time, are hereby incorporated in this Agreement by this reference, as if set forth in full. In confirmation thereof, Donor must provide a Representation Regarding Certain Telecommunications and Video Surveillance Services of Equipment (in the form attached hereto) and abide by a Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. Both are attached hereto as Exhibit E and incorporated into this Agreement by reference. With regard to this section, Donor's obligations will not survive Closing or the transfer of the Property to the United States.

9. Examination of Records

Donor agrees that the Comptroller General of the United States or any duly authorized representatives of the Comptroller General will, until the expiration of three years after title to the Property has been accepted by the United States have access to and the right to examine any directly pertinent books, documents, papers, and records of Donor involving transactions related to this Agreement.

10. Closing Conditions

Donor's obligation to convey the Property to the United States is contingent upon the following conditions being satisfied prior to conveyance (the "Closing Conditions"):

- a. Approval by the Mayor and City Council of the City of Douglas, Arizona, in accordance with the City of Douglas Charter, and the Arizona Open Meetings Laws;
- b. ~~A Memorandum of Understanding between Donor, ADOT and GSA committing to use best and reasonable efforts to assist in Ccompletiong by the City or others of upgrade to and extension of the~~ James Ranch Road ~~extension~~, and ~~completion of ng~~ the installation of the infrastructure required for the Temporary Utilities and the Permanent Utilities, as described in sections 2 and 3 of this Agreement ~~and which~~ will run along and align with the road, within the timeframes stated in sections 2, 3 and 4, of this Agreement;
- c. Use best and reasonable efforts to enter into an agreement with power and broadband utility providers wherein they contractually agree to provide the Temporary Utilities and the Permanent Utilities to the United States as set forth in this Agreement;
- d. Preparation of a survey, plat map, legal description, and title report that is

acceptable to the United States for the Property being donated under this Agreement; and

- e. Certification, in writing, that the environmental representations in the form attached hereto as Exhibit FE and incorporated herein by reference are true and correct to the best of Donor's knowledge on the Closing Date (defined below).

11. Closing

Closing will occur on or within 20 days following the satisfaction of the Closing Conditions or at such earlier date and time as is mutually agreed upon by the Parties (the "Closing Date"); provided, however, that if the Closing has not occurred on or before _____, 2026, then this Agreement will be deemed to have been mutually terminated by the Parties, unless the Parties agree, in writing, to an extension.

12. Definitions

"Hazardous Substances" has the same meaning as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 *et seq.*, and the regulations adopted pursuant to that act. In addition, for purposes of this Agreement, the term "Hazardous Substances" also includes petroleum, including crude oil or a fraction thereof.

13. Environmental Representations

Donor represents and warrants to the United States as of the date Donor executes this Agreement and will be deemed to represent and warrant as of the Closing Date, that, to the undersigned's actual knowledge without investigation other than as reflected in those Environmental Assessment Reports that have been provided to GSA, the undersigned is unaware of any Hazardous Substances existing on the Property.

14. Environmental Indemnification

Donor has determined that the Property is unrestricted as to its uses, and that Donor has taken all response actions necessary to protect human health and the environment as of the date of this conveyance. In the event that any responsive actions necessary to protect human health and the environment are discovered after Closing and are either directly attributable to Donor or occurred during Donor's ownership of the Property, Donor provides assurances that, in accordance with and to the extent such actions are required on the Property by applicable federal, state and local laws, Donor will timely:

- a. Assess, inspect, investigate, study, and remove or remediate, as

Field Code Changed

DRAFT

T

- appropriate, the release or threatened release of a Hazardous Substance, pollutant or contaminant, including hazardous wastes or hazardous constituents, petroleum or petroleum derivatives (as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act), disposed of, released or existing in environmental media, such as soil, subsurface soil, air, groundwater, surface water, or subsurface geological formations at levels above background from or on the Property (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for office use); and
- b. Settle or defend any claim, demand or order made by federal, state or local regulators in connection with any release of a Hazardous Substance, pollutant or contaminant, hazardous waste or hazardous constituent, petroleum derivative occurring on the Property and directly attributable to Donor or occurring during Donor's ownership of the Property. The provisions in this Agreement relating to environmental responsibilities and obligations will survive the expiration or earlier termination of this Agreement.

15. Limitations

- a. Nothing in this Agreement is intended to conflict with current law, regulation, directive, or policy of the United States or GSA. If any provision of this Agreement is inconsistent with any such authority, then that provision is deemed to be invalid and subject to modification upon concurrence of the Parties, and the remaining terms and conditions of this Agreement will continue in full force and effect.
- b. The Parties acknowledge that this Agreement is not a commitment to future funding, staffing or other resources. Nothing in this Agreement may be construed or interpreted to obligate the United States to any current or future expenditure of funds in advance of, or in excess of, the availability of appropriations, nor does this Agreement obligate the United States to spend available funds for any particular purpose.
- c. Nothing in this Agreement constitutes or can be construed as a waiver of the sovereign immunity of the United States.
- d. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person or entity not a Party to this Agreement.

17. Counterparts

This Agreement may be executed in counterparts, each of which will be deemed to be a duplicate original, and which together will constitute one and the same

instrument.

18. Integration and Merger

This Agreement sets out all the terms, conditions and agreements of the Parties and supersedes any previous understandings or agreements regarding the donation, whether oral or written. No modification or amendment of this Agreement will be effective unless in writing and signed by both Parties.

19. Validity of Parts

If any provision of this Agreement is declared to be invalid by a court of competent jurisdiction, the remaining provisions will continue in full force.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date last written below.

**CITY OF DOUGLAS, an Arizona
municipal corporation**

By: _____
Donald Huish
Mayor

Date: _____

Attest:

Approved as to form

Alma Andrade, City Clerk
Attorney

Denis M. Fitzgibbons, City

FOR THE UNITED STATES OF AMERICA,
acting by and through the Administrator of
General Services and authorized
representatives

T

Nina M. Albert
Commissioner
Public Buildings Service

Date: _____

Field Code Changed

EXHIBIT A – LEGAL DESCRIPTION

City of Douglas
407-69-004A

**EXHIBIT "A"
LAND DESCRIPTION**

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 13,
TOWNSHIP 24 SOUTH, RANGE 26 EAST OF THE GILA AND SALT RIVER
MERIDIAN, COCHISE COUNTY, ARIZONA.

SUBJECT TO ANY AND ALL PRIOR EASEMENTS, RIGHTS OF WAY,
COVENANTS, RESTRICTIONS AND ENCUMBRANCES OF RECORD OR NOT
OF RECORD, WHICH MAY OTHERWISE LEGALLY EXIST.

THIS INSTRUMENT IS NOT VALID UNLESS IT BEARS THE ORIGINAL SEAL
AND SIGNATURE OF THE SURVEYOR.

**ANY MODIFICATIONS TO THE FOREGOING DESCRIPTION TERMINATES
THE LIABILITY OF THE SURVEYOR.**

SEE ATTACHED EXHIBIT "B"



EXHIBIT "B"

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION
13 TOWNSHIP 24 SOUTH, RANGE 26 EAST OF THE GILA AND
SALT RIVER MERIDIAN, COCHISE, COUNTY ARIZONA

BASIS OF BEARINGS

AERIAL SURVEY BY MCLAIN HARBERS CO., INC., JOB No. 1651
DATED 5/14/92

LEGEND AND SYMBOLS

- ⊠ ⊠ - FND ALUMINUM CAP LS 14181
- - FND ALUMINUM CAP LS 14181
- - SET ALUMINUM CAP LS 36913



REFERENCE - BK 6 OF SURVEYS PG 3

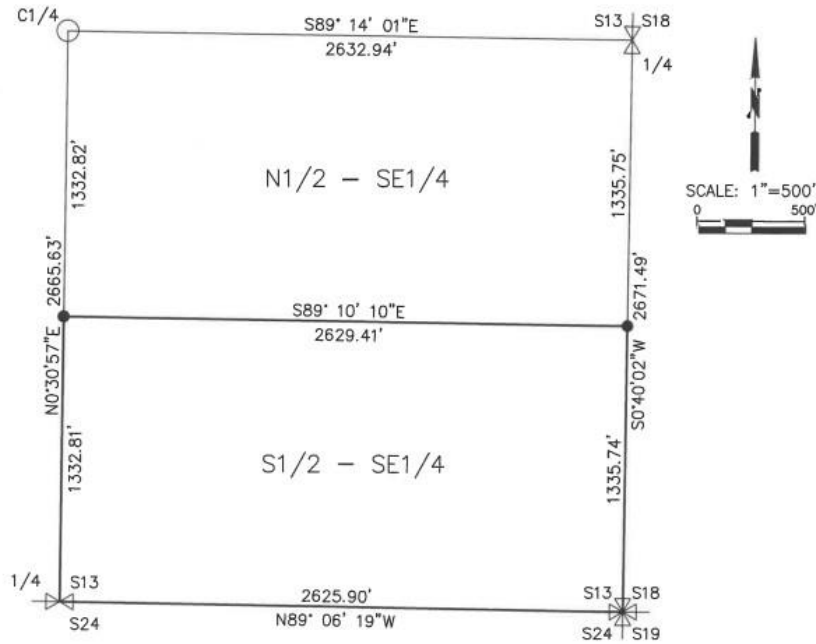
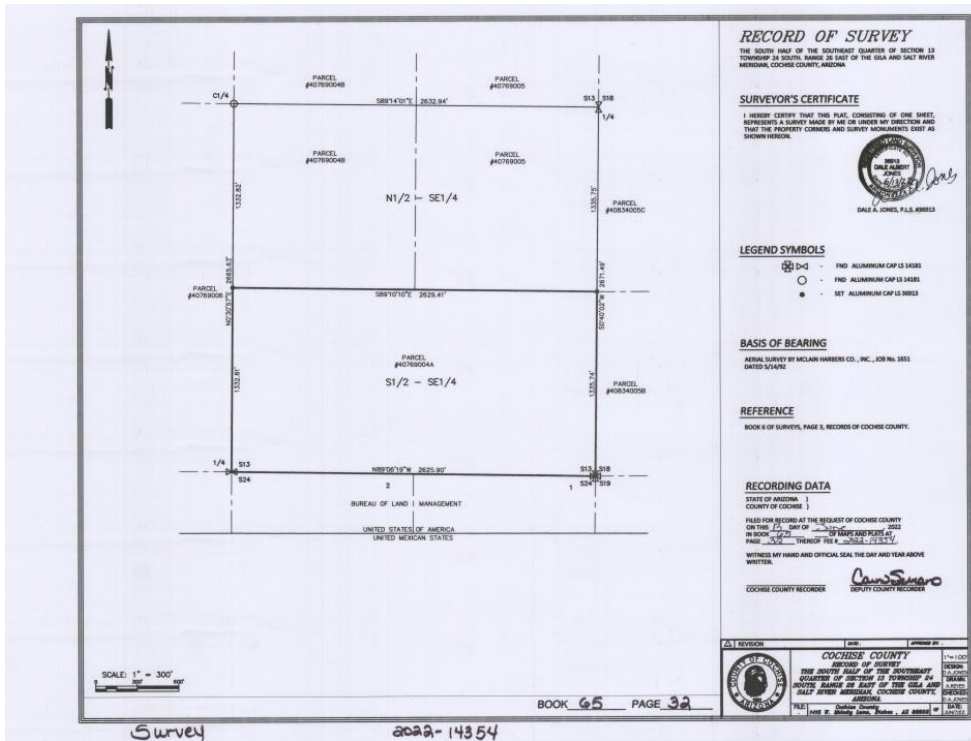


EXHIBIT B – SURVEY



RECORD OF SURVEY

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 13 TOWNSHIP 24 SOUTH RANGE 26 EAST OF THE 6TH AND 5TH RIVERS MERIDIAN, COCHISE COUNTY, ARIZONA

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAC, CONSISTING OF ONE SHEET, REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT THE PROPERTY CORNERS AND SURVEY MONUMENTS EXIST AS SHOWN HEREON.

DALE A. JONES, P.L.S. 458913

LEGEND SYMBOLS

- ⊠ - FIND ALUMINUM CAP IS 34881
- - FIND ALUMINUM CAP IS 34881
- - SET ALUMINUM CAP IS 34881

BASIS OF BEARING

AERIAL SURVEY BY MCLEAN HARRIS CO., INC., JOB No. 1851 DATED 3/24/22

REFERENCE

BOOK 6 OF SURVEYS, PAGE 3, RECORDS OF COCHISE COUNTY.

RECORDING DATA

STATE OF ARIZONA
 COUNTY OF COCHISE
 FILED FOR RECORD AT THE REQUEST OF COCHISE COUNTY
 ON THIS 15TH DAY OF 2022
 IN BOOK 65 PAGE 32 OF THESE RECORDS AT
 PHOENIX, ARIZONA. TRANSFER FEE \$ 11.00
 WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR ABOVE WRITTEN.

COCHISE COUNTY RECORDER

COCHISE COUNTY
 RECORD OF SURVEY
 THE SOUTH HALF OF THE SOUTHWEST
 QUARTER OF SECTION 13 TOWNSHIP 24
 SOUTH RANGE 26 EAST OF THE 6TH AND
 5TH RIVERS MERIDIAN, COCHISE COUNTY,
 ARIZONA.
 FILED BY Dale A. Jones, P.L.S. 458913

BOOK 65 PAGE 32

Survey

2022-14354

Field Code Changed

EXHIBIT C- GENERAL WARRANTY DEED

RECORDING AND RETURN OF RECORDED INSTRUMENT REQUESTED BY:

General Services Administration
Office of Regional Counsel (9L)
50 United Nations Plaza, 4th Floor
San Francisco, CA 94102

WARRANTY DEED

For valuable consideration, the receipt of which is hereby acknowledged, the City of Douglas, Arizona ("Grantor"), does hereby convey to the UNITED STATES OF AMERICA and its successors and assigns ("Grantee") the interests as specified below in all of that certain property situated in the City of Douglas, County of Cochise County, State of Arizona, more particularly described in Exhibits A and B attached hereto and made a part hereof (the "Property"):

1. Fee interest in all of that certain tract of land, containing approximately +/- 80 acres located in the City of Douglas, County of Cochise, State of Arizona, described in Exhibit A, with all strips, gores, rights, privileges, and appurtenances pertaining to such tract, including, without limitation, all mineral rights, oil and gas rights, riparian rights, easements, all development rights, air rights, and any right, title and interest of Grantor in and to streams, stream beds, streets, alleys and rights-of-way, included therein.

Grantor, for itself and its heirs, representatives, successors, and assigns, covenants with the Grantee and its successors and assigns, as follows:

1. Grantor is lawfully seized of good, marketable and enforceable fee simple title to the Property.
2. Grantor has the right to convey the Property.
3. Grantor warrants and will defend the title and quiet enjoyment of the Property against the lawful claims and demands of all persons.
4. Grantor will do any further acts for the purpose of perfecting the title that the covenantees may reasonably require.
5. The Property is free from all liens and encumbrances.

Grantee covenants for itself, and its assigns and every successor in interest to the Property hereby conveyed, or any part thereof, the following:

There shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, religion, sex, or national origin in the enjoyment of the Property, nor shall GSA itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property or any portion thereof.

The acquiring federal agency is the U.S. General Services Administration.

Dated this _____ day of _____, 20_____.

GRANTOR: _____

GRANTEE:

UNITED STATES OF AMERICA
acting by and through the
Administrator of General
Services and authorized
representatives

By: _____
Name and Title

[Notarizations Attached]

EXHIBIT-D

**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

(Space Above for County Recorder's Use)

GRANT OF EASEMENT

_____, a _____ ("Grantor"), hereby GRANTS to _____ ("Grantee"), for valuable consideration, the receipt of which is hereby acknowledged, a nonexclusive easement ("Easement") for purposes of _____, in, on, along, across and under the real property, together with the right of ingress thereto and egress therefrom by a practical route or routes, located in _____, legally described in **Exhibit A** and **Exhibit A-1**, attached hereto and made a part hereof.

All the terms, covenants and conditions of this easement and right of way will be binding upon and inure to the benefit of any heirs, successors, executors, administrators, permittees, licensees, agents, or assigns of Grantor and the successors and assigns of Grantee.

The terms, covenants and conditions of this easement and right of way will be binding upon and inure to the benefit of any heirs, successors, executors, administrators, permittees, licensees, agents, or assigns of Grantor and the successors and assigns of Grantee.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant of Easement as of the date and year first above written.

GRANTOR:

Entity Name & Address

By: _____
Name and Title of Representative

GRANTEE:

UNITED STATES OF AMERICA
acting by and through the
Administrator of General
Services and authorized
representatives

By: _____
Name and Title

[Notarizations Attached]

DRAFT

EXHIBIT DE

Representation Regarding Certain Telecommunications and Video Surveillance Services of Equipment

AND

FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (Nov 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products or Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision—

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(d) Representation. The Offeror represents that—

(1) It will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It does, does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information

required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) Disclosures. (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of clause.)

52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in [4.2105\(b\)](#), insert the following clause:

PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

(a) *Definitions.* As used in this clause—

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled-

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.*

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#).

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR [4.2104](#). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) *Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

Exhibit F

ENVIRONMENTAL REPRESENTATIONS

Donor represents and warrants to the United States Government as of the date of this Donation, and will be deemed to represent and warrant as of the closing date, that, to the best of the Donor's knowledge:

- a. Donor has no liability under, has never violated, and is presently in compliance with all environmental laws, rules, regulations, and ordinances applicable to the property and any operations thereon, and to the best of the Donor's knowledge, there exists no adverse environmental conditions or Hazardous Substances with respect to the property or any operations thereon.
- b. Donor has neither disposed of solid waste on the property, nor generated, manufactured, refined, transported, stored, handled, disposed, transferred, produced, or processed any Hazardous Substances at the property (other than ordinary small quantities of household or office cleaning supplies and office supplies, such as photocopy supplies for office use), and Donor has no knowledge of the release or threat of release of any Hazardous Substances at or in the vicinity of the property.
- c. No lien has been proposed on the property by any governmental entity in connection with an unsatisfactory environmental condition located on or off the property.
- d. The property contains no asbestos-containing material. Asbestos-containing materials are defined as any materials with a concentration of 1% or greater by dry weight of the asbestos fibers.
- e. At the closing, Donor must certify, in writing, that these representations and warranties are true and correct to the best of the Donor's knowledge on the closing date.

Date: _____

Donor: _____
Name & Title