

DONATION ACCEPTANCE AGREEMENT

This Donation Acceptance Agreement (“Agreement”) is made as of _____, 2022 (“Effective Date”) by and between the City of Douglas, an Arizona municipal corporation (“Donor”) and the United States of America by and through the Administrator, General Services Administration, and authorized representatives (“United States” or “GSA”) (collectively the “Parties”).

The purpose of this Agreement is to memorialize the understanding of the Parties regarding three proposed donations to the United States: 1) The first is of approximately 80 acres of unimproved land located in Douglas, Arizona (APN 407-69-004A) and as more particularly described in “Exhibit A – Legal Description” and identified as Lot _____ on a survey prepared by Cochise County, dated attached as “Exhibit B” and incorporated by reference (“Property”); 2) The second is of infrastructure and services for temporary utilities serving the Property consisting of water, electrical, and broadband no later than eighteen (18) months from the execution of this Agreement (“Temporary Utilities”); and 3) The third is of infrastructure and services for permanent utilities serving the Property consisting of water, fire, sewer, electrical, gas, and broadband conduit, no later than forty-eight (48) months from the execution of this Agreement, except for electrical which shall be delivered no later than eighteen (18) months from the execution of this Agreement and broadband which shall be delivered no later than twenty-four (24) months from execution of this Agreement (“Permanent Utilities”).

The Donor wishes to donate the Property and the Temporary and Permanent Utilities serving that Property for use as the site of the new commercial Douglas Land Port of Entry. The United States wishes to accept the Property and the Temporary and Permanent Utilities for the intended purpose subject to the terms and conditions set forth below.

Authority

GSA has the authority to accept these donations under 40 U.S.C. § 581(c)(1), 40 U.S.C. § 3304(b), and 40 U.S.C § 3175. Specifically, via delegation dated August 25, 2020, authority to accept these donations has been granted to the Commissioner and Deputy Commissioner of the Public Buildings Service in accordance with the GSA Delegations of Authority Manual, GSA Order PBS 5450.2.

Consideration and Mutual Obligation

The Donor wishes to donate the Property and the Temporary and Permanent Utilities to the United States and the United States wishes to accept the donations of the Property and Temporary and Permanent Utilities from the Donor. Donor intends to be bound by this Agreement and acknowledges that the United States is expending funds and staff time in the acquisition of the Property and Temporary and Permanent Utilities and is therefore relying upon the donations. The United States agrees to accept the donations of the Property and the Temporary and

Permanent Utilities subject to the Donor satisfying all title and environmental conditions and subject to the terms and conditions below.

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 Contract

1. Satisfactory Title and Title Evidence

In order 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, the Donor agrees to deliver or cause to be delivered to the United States, at the Donor’s expense, such releases, affidavits, or other non-liability title instruments as the Attorney General may require to cure the title defects. Should the Donor fail to cure the title defects within sixty (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 the Donor. If the United States should give such notice of termination, the contract and the obligations incurred thereunder shall be deemed terminated as of the date of such notice without liability by the United States.

The title when conveyed to the United States shall be clear of all mineral rights and interests, easements, restrictions, and leases, except those which may be acceptable to the United States.

2. Deed and Bill of Sale

Title to the Property will be conveyed to the United States by a General Warranty Deed, as shown in that certain form attached hereto and incorporated herein as

Exhibit C. The deed will be prepared by the United States and recorded at its own expense.

Title to the Temporary and Permanent Utilities will be conveyed to the United States by a Bill of Sale, as shown in that certain form attached hereto and incorporated herein as Exhibit D.

3. Temporary and Permanent Utilities

The Temporary Utilities serving the Property being donated by Donor consist of infrastructure and services for water, electrical, and broadband. Donor will use reasonable efforts to work with (the) provider(s) of temporary utility(ies) to expedite permitting and to ensure delivery by the timeline specified in this Agreement. 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 will be provided to the site no later than eighteen (18) months from the execution of this Agreement. The Temporary Utilities may be removed by Donor upon the completion of the Permanent Utilities with GSA's concurrence, which will not be unreasonably withheld.

The Permanent Utilities serving the Property being donated by Donor consist of infrastructure and services of adequate required size for water, fire, sewer, electrical, gas, and broadband conduit. The type of infrastructure and services shall be in a type determined by Donor. Donor will use its best efforts to work with (the) provider(s) of permanent utility(ies) to expedite permitting and to ensure delivery by the timeline specified in this Agreement. 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 an upgraded and extended James Ranch Road being constructed by the Arizona Department of Transportation ("ADOT"). Donor will coordinate and use its best efforts to work with ADOT and/or other agency involved for the placement of the Permanent Utilities. All Permanent Utilities will be delivered no later than 48 months from the execution of this Agreement, except for electrical which shall be delivered no later than 18 months from the execution of this Agreement and broadband conduit which shall be delivered no later than 24 months from execution of this Agreement. 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 or Permanent Utilities.

4. Completion Deadline

This Property along with the Temporary and Permanent Utilities are being conveyed to the United States and its successors and assigns for the purposes of construction of a new Land Port of Entry serving commercial vehicles. Should the United States fail to commence construction of the Land Port of Entry serving commercial vehicles within five (5) years of the execution of this Agreement, then the ownership of and title to the Property (and any Temporary and/or Permanent Utilities) shall automatically revert to and vest in Donor. Provided, however, that this right of reverter will terminate immediately upon the awarding of the contract for the construction of the Land Port of Entry for commercial

vehicles and the expenditure of any funds appropriated for its construction upon the Property.

Donor will construct and provide Temporary Utilities to serve the Property and the construction on it within no later than 18 months from the execution date of this Agreement. Donor will also construct and provide Permanent Utilities to serve the property no later than 48 months from the execution date of this Agreement. Donor acknowledges that without Temporary Utilities and certain Permanent Utilities within the specified timeframes, construction of a new land port of entry by the United States cannot begin on the Property. Further, Donor acknowledges that without Permanent Utilities, the United States cannot operate a Land Port of Entry for commercial vehicles. Therefore, Donor will use its best efforts to coordinate with all Temporary and Permanent Utility providers to expedite delivery of the service and coordinate for delivery.

5. Diminution in Value, Loss or Damage

The Donor agrees not to do, or permit others to do, any act by which the value of the Property may be diminished or whereby the title to the Property may be encumbered. The 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 shall be borne by the Donor, and the United States may, without liability, refuse to accept conveyance of the Property.

The Donor additionally agrees that if any loss or damage to the Temporary and/or Permanent Utilities, 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 shall be borne by the Donor, and the United States may, without liability, refuse to accept the conveyance of Temporary and/or Permanent Utilities.

6. Extension of James Ranch Road

Permanent Utilities from Donor will run along the newly constructed extension of James Ranch Road. Therefore, Donor will cooperate with and use its best efforts to assist ADOT as ADOT constructs and extends James Ranch Road to serve the Property. To that end, Donor may 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 and United States acknowledges that the United States cannot construct or operate a new Land Port of Entry without the extended and upgraded road, and the Temporary and Permanent Utilities running along and/or aligning it.

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, the 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 shall not survive Closing or the transfer of the Property to the United States.

9. Covenant Against Contingent Fees

The Donor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Donor for the purpose of securing business. For breach or violation of this provision, the United States shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price the full amount of such commission, percentage, brokerage, or contingent fee.

10. Examination of Records

The Donor agrees that the Comptroller General of the United States or any duly authorized representatives of the Comptroller General shall, until the expiration of three (3) years after completion of the new Land Port of Entry, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Donor involving transactions related to this Agreement.

11. 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 completing the James Ranch

Road extension, and completing the Temporary and Permanent Utilities, as described in Section 3 of this Agreement, that run along and/or align with the road within the timeframes stated in Section 4; and

- c. Use best and reasonable efforts to enter into an agreement with power and broadband utility providers' wherein they contractually agree to provide Temporary and Permanent Utilities to the United States as set forth in this Agreement.
- d. A survey, plat map, legal description, and title report for the real property being donated in this Agreement.

12. Closing

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

13. 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.

14. Environmental Representations

Donor represents and warrants to the United States as of the date the 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 which have been provided to GSA, the undersigned is unaware of any Hazardous Substances existing on the Property.

15. 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 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, as 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; 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.

16. 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 shall not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

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 C. Huish, Mayor

Date: _____

Approved as to form

Attest:

Alma Andrade, City Clerk

Denis M. Fitzgibbons, City Attorney

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



Dale Albert Jones

REFERENCE - BK 6 OF SURVEYS PG 3

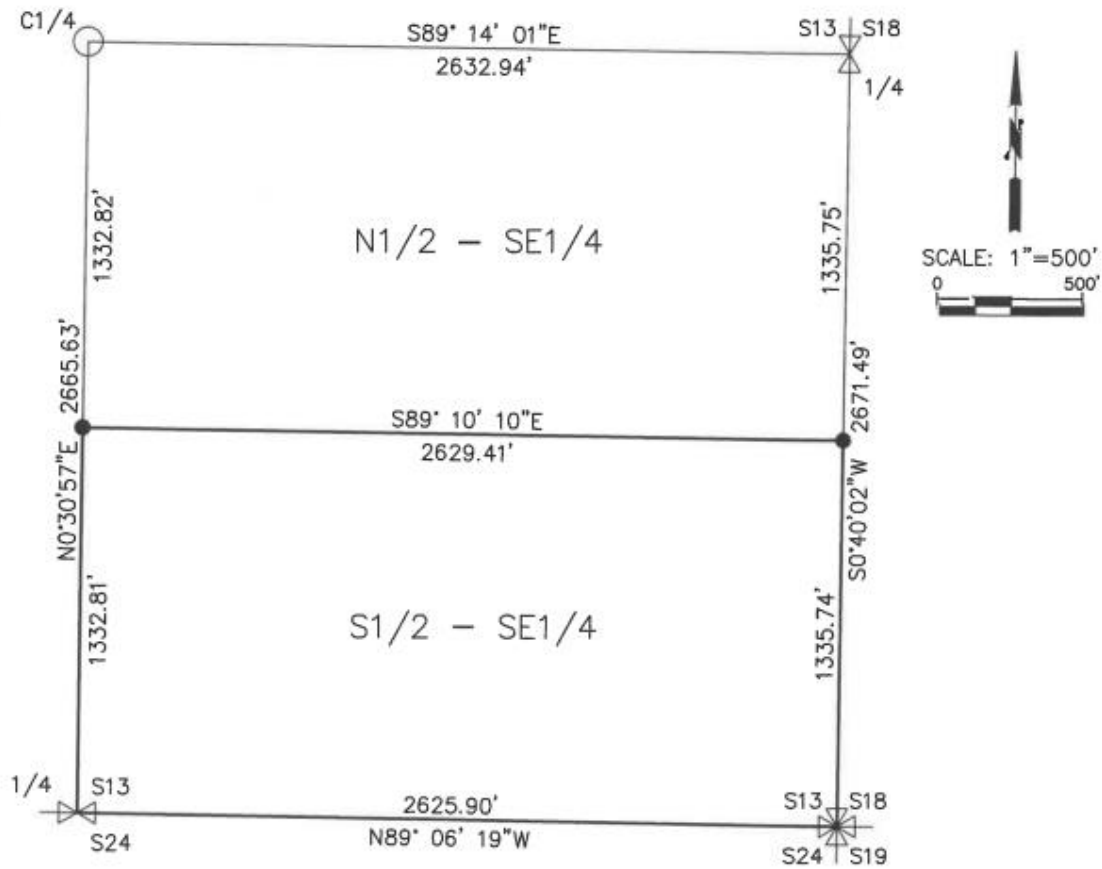


EXHIBIT B – SURVEY

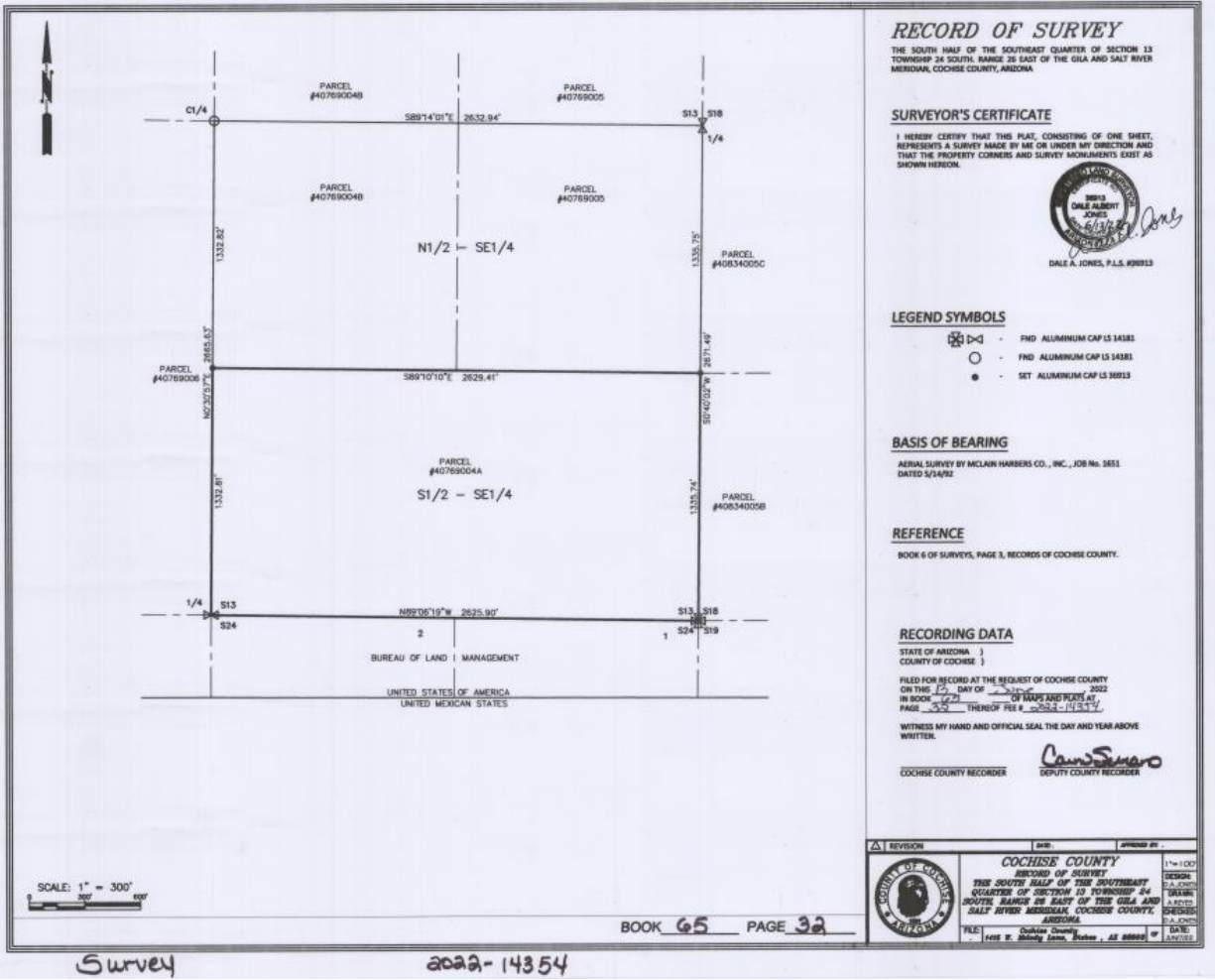


EXHIBIT C- GENERAL WARRANTY DEED

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, City of Douglas, Arizona (“Grantor”) does hereby convey to the UNITED STATES OF AMERICA AND ITS ASSIGNS, (“GRANTEE”) 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 (“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 General Services Administration.

Dated this _____ day of November 2022.

GRANTOR: _____

EXHIBIT D

Bill of Sale

The City of Douglas, an Arizona municipal corporation, whose address is ___ 425 E. 10th Street, Douglas, AZ 85607 _____, and its successors and assigns (“Donor”), pursuant to a Donation Acceptance Agreement dated _____, 202_ (“Agreement”), will transfer, convey and deliver certain temporary and permanent utilities at a +/- 80 acre parcel of land located in the City of Douglas, Arizona, whose legal description and map are attached in Exhibits A and B hereto, to the United States of America, acting by and through the Administrator of General Services and authorized representatives, whose address is 1800 F Street, N.W, Washington, DC 20405 (“GSA”).

In consideration of the covenants contained in this Bill of Sale and in the Agreement, AND IN CONSIDERATION of the sum of One Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Donor hereby transfers, conveys, and delivers to GSA the property described as follows:

Temporary Utilities consisting of water infrastructure and service.

Permanent Utilities consisting of infrastructure and services for water, fire, sewer, electrical, gas, and broadband conduit.

The properties described above are transferred with all applicable warranties and representations.

This Bill of Sale will be governed by and construed in accordance with the laws of the United States.

This Bill of Sale will become effective between Donor and GSA on the date executed by both parties below.

This Bill of Sale will bind and inure to the benefit of Donor and GSA and their respective successors and assigns.

Signatures on Following Page]

IN WITNESS WHEREOF, this Bill of Sale is signed by its duly authorized Mayor, this ____ day of _____, 2022.

CITY OF DOUGLAS, an Arizona
municipal corporation

By: _____
Donald C. Huish, Mayor

Acknowledgement

(State of Arizona County of Cochise) On _____ before me,
_____ (insert name and title of the officer)
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument. I certify under
PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

United States of America,
acting by and through the Administrator
of General Services and authorized
representatives

By: _____
Name and Title

EXHIBIT E

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)