

**MEMORANDUM OF UNDERSTANDING
BETWEEN
ARIZONA BORDER ALLIANCE
AND
CITY OF DOUGLAS
REGARDING ESTABLISHING A PARTNERSHIP FOR THE ENVIRONMENTAL
PROTECTION AGENCY (EPA) ENVIRONMENTAL AND CLIMATE JUSTICE
COMMUNITY CHANGE GRANTS PROGRAM WHERE THE ARIZONA BORDER
ALLIANCE WILL COMMIT TO BEING THE COMMUNITY BASED
ORGANIZATION (CBO) FOR THE APPLICATION
IN DOUGLAS, ARIZONA**

This Memorandum of Understanding (MOU) is entered into on this 13th day of November, 2024 by and between Arizona Border Alliance, a 501 (c) (3) nonprofit corporation hereinafter referred to as “ABA”, and **City of Douglas**, an Arizona municipal corporation hereinafter referred to as “City”.

RECITALS

WHEREAS, the City and Consultant seek to collaborate on the development and completion of the Environmental and Climate Justice Community Change Grants Program application submission; and

WHEREAS, ABA has agreed to provide resources as defined in the grant application; and

WHEREAS, the City supports the project as defined in the grant application and intends to collaborate with the Consultant to ensure the successful development of the grant proposal and management of the grant award; and

WHEREAS, both parties recognize the mutual benefits of this partnership in enhancing the infrastructure for the community;

WHEREAS, this MOU shall be considered a “Partnership Agreement” as defined by the Environmental and Climate Justice Community Change Grant; and

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

1. TERM

The term of this MOU shall begin on the date set forth above and expire on _____ or until the completion of the Project, whichever occurs later. If the Environmental and Climate Justice Community Change Grant is not awarded to the Parties, this MOU will automatically terminate. This MOU shall automatically terminate upon completion of the project, unless terminated pursuant to Section 12 (Termination) of this MOU. Nothing contained herein, or any of the obligations of the parties hereunder, will in any manner inure to the benefit of third parties, unless otherwise agreed to in writing by both parties to this MOU.

2. CITY'S ROLE

(1) General

- i. Infrastructure Development: The City commits to funding the development of water and sewer infrastructure to the west of the Port of Entry (POE) to support the objectives of the project.
- ii. Pollution Mitigation: The City will address pollution strategies as outlined in the mitigation section of the grant application, ensuring compliance with all applicable environmental regulations and best practices.
- iii. Lead Applicant: The City will serve as the lead applicant for the grant, taking full responsibility for the preparation and submission of the grant proposal.
- iv. Grant Management and Administration: The City will manage all aspects of the grant, including administration and compliance with the terms and conditions of the funding agency. This includes financial management, progress tracking, and coordinating any required reporting to ensure the successful implementation of the project.
- v. Subaward and Pass-Through Entity:
 1. If the application is selected for an award, the Lead Applicant (the City) will enter into a subaward with the Statutory Partner, ABA.
 2. Upon selection for an award, the City will become the grantee and will operate as a pass-through entity in accordance with 2 CFR Part 200 and the EPA Subaward Policy. The City will take responsibility for making subawards to Collaborating Entities.
 3. The Lead Applicant will also be accountable to the EPA for effectively carrying out the full scope of work and ensuring proper financial management of the grant, including oversight of subawards and contracts to consultants and procurement contractors. These contracts will be selected in accordance with competitive procurement requirements in 2 CFR Parts 200 and 1500, as well as EPA's 40 CFR Part 33 Disadvantaged Business Enterprise (DBE) rule.

(2) Scope of Support

It is anticipated that the City will provide the following technical assistance and services under this MOU:

- i. Review and approve design submissions within a reasonable timeframe.
- ii. Provide feedback and necessary approvals for each phase of the project.
- iii. Ensure timely communication and facilitation of meetings as needed.

3. ABA's ROLE

(1) General

i. Grant Activities Implementation: ABA will carry out the grant activities as detailed in the application, should the project be selected for funding. This includes executing the tasks outlined in the scope of work in a timely and effective manner.

ii. Commitment to Climate Action Strategy: ABA commits to supporting and implementing the Climate Action Strategy as outlined in the grant application, ensuring alignment with the environmental goals and objectives of the project.

iii. Compliance with Grant Guidelines and Federal Regulations: ABA will ensure full compliance with all applicable grant guidelines and federal regulations throughout the life cycle of the grant, from project initiation to closeout. This includes adherence to financial management, reporting, and performance standards as required.

iv. ABA will comply with the EPA's Subaward Policy

4. Grant Award

This MOU is contingent upon the City of Douglas receiving the Environmental and Climate Justice Community Change Grant attached as Exhibit A. All guidelines must be followed by both City and ABA per the Grant Agreement.

5. Fees and Payment

ABA shall be compensated as per the Grant Agreement.

6. Deliverables

City shall deliver, with ABA's input and consent, a completed grant application to the EPA. Both parties shall comply with the grant application and grant agreement proposals for the life of the project.

7. 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.

8. Conduct of Operations

The ABA 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 MOU. 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 MOU. 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 maintain adequate professional and general liability insurance coverage at all times while this MOU is in effect.

9. Indemnification

To the fullest extent permitted by law, each party to this MOU 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 of 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. This Section shall survive the expiration or early termination of the Agreement.

10. Assignments

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

11. 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 MOU 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 MOU.

12. Termination

Either party may terminate this MOU 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 MOU, upon termination, the other party at its sole discretion may discontinue all services and obligations under this MOU upon deciding that it is in their best interest to do so. In the event of termination, the ABA shall deliver or otherwise make available to the City, copies of such information and materials that may have been prepared in the performance of this MOU.

13. Insurance

13.1 General.

a. **Insurer Qualifications.** Without limiting any obligations or liabilities of the ABA, the ABA shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly authorized to do business in the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. **No Representation of Coverage Adequacy.** By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve the ABA from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. **Additional Insured.** All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation/Employer's Liability insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. **Coverage Term.** All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. **Primary Insurance.** The ABA's insurance, except Workers' Compensation/Employer's Liability insurance and Professional Liability insurance, if applicable, shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. **Claims Made.** In the event any insurance policies required by this Agreement

are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of the ABA. The ABA shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto on a blanket basis.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. The ABA shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, the ABA shall execute written agreement with the Subcontractor containing the indemnification provisions and insurance requirements (unless waived by City in City's sole discretion) set forth herein protecting the City and the ABA. The ABA shall be responsible for executing the agreement with the Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, the ABA shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by ABA's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be the ABA's responsibility to forward renewal certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 or equivalent.
- (b) Auto Liability - Under ISO Form CA 2048 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) The ABA 's insurance shall be primary and non-contributory insurance

as respects performance of the Agreement, except Workers' Compensation/Employer's Liability insurance and Professional Liability insurance, if applicable.

(3) All policies, excluding Professional Liability, waive rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by the ABA under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

13.2 Required Insurance Coverage.

a. Commercial General Liability. The ABA shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$1,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. Such limits may be met in combination of primary and excess policies. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury or death, personal injury, advertising injury and property damage. Coverage under the policy will be at least as broad as ISO policy forms CG 00 010 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials, volunteers and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you."

b. Professional Liability (Errors and Omissions Liability). ABA shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the ABA, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the ABA is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, ABA warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Agreement is completed.

c. Workers' Compensation Insurance. ABA shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of ABA's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

13.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, except for non-payment of premium, without thirty (30) days prior written notice to City.

14. Miscellaneous Provisions

(1) **Authority of Signatory**

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

(2) **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 MOU.

(3) **Non-Discrimination**

In performance of this MOU 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 in the course of carrying out their duties pursuant to this MOU. The parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this MOU by reference, as if set forth in full herein.

(4) **Cancellation**

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

(5) **Entire Agreement**

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

(6) **Governing Law and Venue**

The terms and conditions of this MOU 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 MOU 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 MOU or to recover any damages for on account of the breach of any term or conditions of this MOU, 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.

- (7) **Incorporation of Documents**
All documents referred to in this MOU are hereby incorporated by reference into the MOU.
- (8) **Integration**
This MOU contains the entire arrangement between the parties. No statement, promise or inducement made by either party that is not contained in this written MOU and signed by both parties shall be valid or binding.
- (9) **No Third-Party Beneficiaries**
Only the parties may enforce this MOU. The parties do not intend to confer enforceable rights on any non-party through this MOU and do not intend to create any third-party beneficiaries to this MOU.
- (10) **Section Headings**
Captions and section headings used herein are for convenience only, are not a part of this MOU, shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this MOU.
- (11) **Severability**
The provisions of this MOU shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provisions.
- (12) **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 MOU 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.
- (13) **Ownership Of Records And Reports**
All of the files, reports, documents, information and data prepared or assembled by ABA under this Agreement shall be and remain the property of City and shall be forwarded to City at any time City requires such papers.
- (14) **No Kick-Back Certification**
ABA warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in the ABA's firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid ABA hereunder, the full amount of such commission, percentage, brokerage or contingent fee.
- (15) **Israel Boycott**
ABA certifies that it currently does not participate in and agrees not to participate in during the term of this Agreement, a boycott of Israel in accordance with A.R.S. §35-

393.01.

(16) **Forced Labor Of Ethnic Uyghurs Prohibited.**

Pursuant to A.R.S. §35-394, Consultant hereby certified to City as follows: that it is not currently using, and agrees for the duration of this Agreement to not use: (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor of ethnic Uyghurs in the People's Republic of China. ABA further acknowledges and agrees that: (1) if the ABA becomes aware during the term of this Agreement that it is not in compliance with this certification that ABA will notify the City within five (5) business days after becoming aware of the noncompliance; and (2) if ABA does not provide the City with a written certification that ABA has remedied the noncompliance within one hundred eight (180) days after giving notice thereof, the same shall constitute a material breach of this Agreement, which shall then terminate automatically, except that if the Agreement termination date occurs before the end of the remedy period, this Agreement terminates on the Agreement's termination date. The City retains the legal right to inspect the records of Consultant to ensure compliance with this certification for the duration of this Agreement.

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

Alejandra Boneo
FOR Arizona Border Alliance

Date: _____

FOR CITY

Ana Urquijo

Date: _____