

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
COCHISE COUNTY  
AND  
CITY OF DOUGLAS  
REGARDING EFFORTS TO DESIGN AND CONSTRUCT THE CONNECTOR ROAD  
FOR THE COMMERCIAL LAND PORT OF ENTRY  
WEST OF DOUGLAS, ARIZONA**

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

**RECITALS**

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

**WHEREAS**, the City owns an 80 acre parcel 4.5 miles west of the City limits along the U.S./Mexico border and has entered into a donation acceptance agreement with GSA for the donation of this parcel for the construction of a new CLPOE and agreed to bring utilities and assist with the construction of a new connector road for the new CLPOE; and

**WHEREAS**, no existing all-weather roadway connects State Route 80 to the site of the proposed CLPOE; and

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

**WHEREAS**, the purpose and intent of this IGA is to coordinate funding for design and construction for the Connector Road Project to be designed to connect commercial traffic from the new CLPOE to State Route 80; and

**WHEREAS**, to facilitate the intent and purpose of this IGA, necessary information, stakeholder collaboration and partnerships, and other resources from the City and County may be needed for the Connector Road Project; and

**WHEREAS**, the County possesses road jurisdiction to apply for opportunities that can provide resources to assist in completing the Connector Road Project; and

**WHEREAS**, the City possesses capacity for specific match funding through state and federal grant awards, technical and planning knowledge, and resources to assist the County in the Connector Road Project.

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

### **1. DURATION OF AGREEMENT**

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

### **2. PURPOSE**

The purpose of this IGA is for the City of Douglas and Cochise County to work together and along with state and federal agencies to build the Connector Road Project. The Connector Road Project will connect the new CLPOE to State Route 80 providing a vital connection for international trade between the United States and Mexico. ADOT is developing the Design Concept Report for the connector road to the new CLPOE and the City and the County are working with ADOT to place the Connector Road Project in the ADOT 5 year plan. The City and the County are to coordinate and seek funding for the design, Right of Way, and construction of the Connector Road Project through State and Federal funding sources available. If funding sources are not obtained through ADOT, the State of Arizona or a federal agency, the City and County will combine efforts and resources to fund and/or construct the Connector Road Project to then County standards within the financial means of the local governments.

### **3. CITY’S ROLE**

#### **a. General**

The City will provide match funding, technical assistance, and services to the County, in a professional manner, for successful completion of the Connector Road Project as outlined in Section 2.b, Scope of Services, directly below. It is understood that during the development of the Connector Road Project, additional funding or activities may be required to design and construct the connector road for the CLPOE. It is also understood that the ultimate scope of services may depend on successful funding applications to federal and state agencies or other organizations whose priorities lie in the Connector Road Project. It is further understood the City’s ability to participate and provide match funding for the Connector Road Project may be contingent upon available funding and the flexibility of the City’s established budget.

#### **b. Scope of Services**

It is anticipated that the City will provide the following support under this IGA:

- i. \$8,170,000.00 appropriated to the City under the 2024 Arizona Legislative Appropriation Transportation Projects General Fund (Laws 2023, 1<sup>st</sup> Regular Session, Chapter 135 Senate Bill 1722) as matching funds for:
  1. Arizona State Match Advantage for Rural Transportation (“AZ

SMART”) Fund, where the City will contribute \$500,000 from the 2024 Legislative Appropriation for the planning and design phase, as per the AZ SMART grant application of March 6, 2024; and

2. County applications to federal grants from any U.S. Department of Transportation, State, or other agency grant program for the Connector Road Project.
- ii. The City may also use the legislative appropriated funding for the County to conduct right of way acquisition
- iii. Additional funding as approved by the City Mayor and Council may be allocated towards the Connector Road Project.

#### **4. COUNTY’S ROLE**

##### **a. General**

Cochise County will act as the grant recipient and assist with match funds, according to the County budget limitations for state or federal funds related to the Project. The County, in its sole discretion, will determine when other agencies can be utilized for the administration of such grants.

##### **b. Scope of Facilitation and Services**

It is anticipated that Cochise County will provide the following support under this IGA:

- i. AZ SMART Fund: The County will provide \$100,000 to the planning and design phase, as per the AZ SMART grant application of March 6, 2024.
- ii. Provide a mutually agreed upon In-Kind Match, subject to reasonable limitations, to meet the requirements of available funding sources.
- iii. May act as applicant on funding sources where applicable.
- iv. Concurrently share known available funding sources for the support of the Connector Road Project.
- v. As approved by the Board, allot a portion of the County Highway User Revenue Funds to the Connector Road Project.
- vi. Support in the identification of County stakeholders needed to successfully complete the Connector Road Project.
- vii. Provide any other support as deemed reasonable by the County for the completion of the Connector Road Project.

## **5. Record Retention**

Each party shall retain records and documents relating to the performance of services under this IGA following the Arizona state retention policy relevant to each document. Each party may retain such records for additional years, if the party determines that doing so is in the best interest of project implementation.

## **6. No Employment Relationship**

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

## **7. Conduct of Operations**

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

## **8. Indemnification**

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

## **9. Assignments**

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

## **10. Dispute Resolution**

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

## **11. Termination**

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

## **12. Miscellaneous Provisions**

### **a. Authority of Signatory**

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

### **b. Compliance with Laws**

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

### **c. Non-Discrimination**

In performance of this IGA the Parties shall not discriminate against any County employee or City employee, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin while carrying out their duties pursuant to this IGA. The Parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 99-4, which is incorporated into this IGA by reference, as if set forth in full herein.

### **d. Cancellation**

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

### **e. Entire Agreement**

This IGA and any attachments represent the entire agreement between City and County, and

supersede all prior negotiations, representations, or agreements, whether express or implied, written, or oral.

**f. Governing Law and Venue**

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

**g. Incorporation of Documents**

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

**h. Integration**

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

**i. No Third-Party Beneficiaries**

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

**j. Section Headings**

Captions and section headings used herein are for convenience only, are not a part of this IGA, shall not be deemed to limit or alter any provisions hereof, and shall not be deemed relevant in construing this IGA.

**k. Severability**

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

**l. Waiver of Terms and Conditions**

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

in full force and effect.

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

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

**City of Douglas**

By: \_\_\_\_\_  
Ann English, Chairperson  
Cochise County Board of Supervisors

By: \_\_\_\_\_  
Donald Huish, Mayor  
City of Douglas

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Denise Riden, Deputy County Attorney

By: \_\_\_\_\_  
Denis Fitzgibbons, City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Attestation**

**Attestation**

By: \_\_\_\_\_  
Lara Loewenheim, Clerk  
Cochise County Board of Supervisors

By: \_\_\_\_\_  
Alma Andrade, City Clerk  
City of Douglas