

**AMERICAN RESCUE PLAN ACT OF 2021
SUBRECIPIENT AGREEMENT
BETWEEN COCHISE COUNTY
AND CITY OF DOUGLAS**

This AGREEMENT is made effective this ____ day of _____, 2024, (“Effective Date”) between Cochise County (“County”), a political subdivision of the State of Arizona and the City of Douglas (“City”), a municipal corporation.

RECITALS

WHEREAS, County has received money from the American Rescue Plan Act of 2021 (“ARPA”), H.R. 1319; Title IX—Committee on Finance; Subtitle M—Coronavirus State and Local Fiscal Recovery Funds; Section 9901, Coronavirus State and Local Fiscal Recovery Funds; and

WHEREAS, the U.S. Department of the Treasury (“Treasury”) has published the final rule to implement ARPA (Federal Register / Vol. 87, No. 18 / Thursday, January 27, 2022 / Rules and Regulations); and

WHEREAS, 31 CFR Part 35, Subpart A, § 35.6(e) of Treasury’s final rule identifies making necessary investments in water, sewer, and broadband infrastructure as an eligible use for ARPA funds; and

WHEREAS, Treasury clarifies in the final rule that the need identified for a water or sewer project may include a need arising from reasonable expectations of future population growth, provided that it is necessary at the time the investment is initiated for the recipient to make the investment to meet this growth; and

WHEREAS, the County and City support the General Services Administration (“GSA”) project to build the new Douglas Land Port of Entry (“LPOE”) 4.5 miles west of the existing Raul Hector Castro LPOE in Douglas, Arizona; and

WHEREAS, upon its completion, U.S. Customs and Border Protection will permanently relocate commercial inspection operations from the Raul Hector Castro LPOE to the newly constructed dedicated commercial Douglas LPOE (“Project”); and

WHEREAS, the Project is already spurring additional investments with the construction of a new utility corridor along State Route 80, a new industrial warehouse and business park zone, the installation of broadband internet infrastructure, as well as the chance to bring new construction, service, and manufacturing jobs to this remote region in Southeast Arizona; and

WHEREAS, the City signed a Donation Acceptance Agreement with GSA on September 11, 2024 for the port location, and such agreement requires the City to provide water and wastewater services for construction and future operations; and

WHEREAS, the County and the City entered into a Memorandum of Understanding (“MOU”) on December 14, 2021 with the purpose and intent to coordinate funding and construction for utilities related to the development of the LPOE on James Ranch Road (“Water/Sewer/Broadband Projects”); and

WHEREAS, such MOU stated that, as approved by the Cochise County Board of Supervisors, a portion of the County’s American Rescue Plan Act (“ARPA”) funds be allotted to the Water/Sewer/Broadband Projects as allowable under 31 CFR Part 35, Department of Treasury Interim Final Rule; and

WHEREAS, obligation of these funds must occur before December 31, 2024 and expenditure must be incurred by December 31, 2026; and

WHEREAS, the Federal Government’s published reporting requirements for the use of ARPA funds include, but are not limited to; Code of Federal Regulations, 2 CFR Part 200 (<https://ecfr.federalregister.gov/current/title-2/subtitle-A>), information from the General Services Administration (<https://sam.gov/fal/7cecfdef62dc42729a3fdcd449bd62b8/view>), Compliance and Reporting Guidance (<https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf>) from the Department of the Treasury, the 2024 OMB Compliance, and Compliance Requirements for 2 CFR Part 200, Appendix XI, issued on May 5, 2024 (<https://www.whitehouse.gov/wp-content/uploads/2024/05/2024-Compliance-Supplement-V1.pdf>), and Department of Treasury, 2022 Final Rule (<https://www.federalregister.gov/documents/2022/01/27/2022-00292/coronavirus-state-and-local-fiscal-recovery-funds>) ; and

WHEREAS, the ARPA funds are to be used within the geographical boundaries of Cochise County, and for the benefit of residents of Cochise County; and

WHEREAS, the County is authorized to distribute the ARPA funds to sub-recipients, who are required to use ARPA funds to accomplish the purposes of the ARPA; and

WHEREAS, the City wishes to become a sub-recipient of ARPA funds and has requested \$5,000,000 for the Water/Sewer/Broadband Projects; and

WHEREAS, the ARPA funds are subject to repayment if they are not spent consistent with the purposes, laws, rules, and guidelines of the ARPA; and

WHEREAS, the County and the City believe the use of the funds pursuant to this Agreement is in compliance with the laws, rules, and guidelines of the ARPA; and

WHEREAS, the County has the authority to enter into this Agreement pursuant to the ARPA, and Arizona Revised Statutes (“A.R.S.”) §§ 11-201 and 11-251.

AGREEMENT

NOW THEREFORE, County and the City in consideration of the mutual covenants set forth herein, agree to be legally bound as follows.

1. Incorporation of Recitals and ARPA

The Recitals set forth above are incorporated into this Agreement. ARPA is incorporated into this Agreement by reference as if fully stated herein and all material and applicable terms and conditions of ARPA and its funding objectives and obligations, including, but not limited to, regulations implementing ARPA, the U.S. Department of Treasury interim and final rules, Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds, FAQs, and performance and reporting requirements. This also includes any rules, regulations, performance and reporting requirements under ARPA which may be imposed after the date of this Agreement.

2. Duration of this 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.

3. Termination

- a. If either party fails to perform its respective obligations herein, the non-defaulting party shall give written notice of the default to the defaulting party. If the default is not cured within thirty (30) days of receipt of the notice of default or if the defaulting party has not commenced curing such default within such (30) days (for a default that cannot reasonably be cured within thirty (30) days), the non-defaulting party may terminate this Agreement upon written notice of termination delivered to the defaulting party. Any termination of this Agreement shall not relieve the parties of responsibility for obligations incurred prior to the effective date of the termination. Further, any monies not properly spent by the City prior to termination shall be returned to the County no later than ten (10) days from the date of termination. Paragraphs 6(e), 6(f), 6(g) and (7) shall survive the termination of this Agreement.
- b. The Water/Sewer/Broadband Projects proposed by the City must be completed by December 31, 2026, according to ARPA Final Rules. Upon thirty (30) days written notice, the County may terminate the Agreement, if the project will not be completed by December 31, 2026 and re-obligate funds elsewhere, per the Treasury Interim and Final Obligation Rules.

4. Conflict of Interest

This Agreement is subject to cancellation under the conflict-of-interest provisions of A.R.S. § 38-511.

5. Duties of Cochise County

The County agrees to:

- a. Provide the ARPA funds as outlined in this Agreement.
- b. Confirm eligibility of the City's project/program in accordance with the most current published rules (Treasury's Coronavirus SLFRF Final Rule) and establish metrics to be reported throughout the project/program term.
- c. Provide to City a total award amount of up to \$5,000,000.00 for the approved Attachment A – ARPA funds Project Proposal and associated line-item budget.
- d. Review the pre-project and project plan(s) submitted by the City identifying the Water/Sewer/Broadband Projects it intends to accomplish with the ARPA funds. Only after County has approved the City plans can any ARPA funds allocated to City pursuant to this Agreement be reimbursed to the City.
- e. Comply with the Federal Government's reporting requirements for the ARPA (including 2 CFR 200). And,
- f. Monitor the use of these ARPA funds by the City, consistent with the Federal Government's requirements (including 2 CFR 200.332).

6. Duties of the City

The City agrees to:

- a. Submit a written pre-project plan(s) to the County identifying the Water/Sewer/Broadband Projects the City intends to accomplish, and how ARPA funds will be spent. This will be done prior to initiating any project and incurring any expenditures toward any Water/Sewer/Broadband Projects.
- b. Abide by all laws, rules, and guidelines of the Federal Government for its use of these ARPA funds.
- c. Submit a monthly report and requests for reimbursement of actual expenses incurred by the program, as well as all supporting documentation, to Cochise County Finance for review of compliance with ARPA and 2 CFR 200, Subparts D and E. These

documents will be due no more than fifteen (15) days before the last day of the reporting month.

- d. Provide, in a timely manner, any information County needs to comply with the Federal Government’s reporting requirements (including 2 CFR 200 and 2 CFR 200.332). This includes, but is not limited to; providing copies of contracts, contract amendments, line-item detail of project budgets, receipts, invoices, packing slips, purchase orders, and payments.
 - i. Reporting Requirements Specific to Water/Wastewater Projects
The City shall report the following quarterly metrics in a format instructed by the County as required by Treasury for projects in ARPA Expenditure Category 5.1- 5.18 (Water/Wastewater Projects).
 - a) Number of new jobs created
 - b) Number of new entities connected to water and sewer
 - c) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable)
 - d) Public Water System (PWS) ID Number (if applicable)
 - e) Median Household Income of Service Area
 - f) Lowest Quintile Income of the Service Area
 - ii. Quarterly metric reports will be due as follows:

Report Due Date	Report Period
October 31	July 1 – September 30
January 31	October 1 – December 31
April 30	January 1 – March 31
July 31	April 1 – June 30

- e. Comply with, and assist County in complying with, any Federal Government Audit requirements (including 2 CFR Part 200, Subpart F). The City shall keep and maintain proper and complete books, records, files, and accounts of all its operations, which shall be open for inspection and audit by County or its auditors at all reasonable times. All books, accounts, reports, files, and other records relating to this Agreement shall be subject to inspection and audit by County for five (5) years after the later of (i) the completion of the Agreement; or (ii) the date the Federal Government completes its auditing of the use of ARPA funds.
- f. Reimburse County for any and all ARPA funds that the Federal Government determines were not used by the City in compliance with ARPA laws, rules, and guidelines. The intent of the parties is that the City will reimburse County within a time frame that allows County to use the reimbursed funds to refund the money to the U.S. Department of the Treasury, as required by the ARPA.

- g. Comply with the Federal Government's requirements regarding the purchase, use, and disposition of real property and/or equipment. This includes, but is not limited to, the following:
 - i. Equipment and real property acquired with these funds must be used solely for the purpose(s) stated in this Agreement and consistent with the ARPA.
 - ii. Any purchase, use, and disposition of equipment or real property with these funds must comply with the Uniform Guidance at 2 CFR Part 200, Subpart D (including 2 CFR 200.310, 2 CFR 200.311 and 2 CFR 200.313).
- h. Assure that any expenses reimbursed under this Agreement have not been or will not be reimbursed under any other federal program funding source.

7. Indemnification

To the fullest extent permitted by law, each party (as indemnitor) agrees to indemnify, defend and hold harmless the other party, including its elected and appointed officials, officers, directors, commissioners, board members, agents and employees (collectively, indemnitee) from and against all claims, losses, liabilities, costs or expenses (including reasonable attorneys' fees) on account of loss of or damage to any property or for injuries to or death of any person, but only to the extent such claims which result in vicarious, derivative or other form of liability to the indemnitee are caused by the act, omission, negligence, misconduct or other fault of the indemnitor or its employees, subcontractors, agents or representatives.

8. Governing Law

This Agreement is executed in the State of Arizona and this Agreement and every matter or thing arising therefrom shall be construed in accordance with the laws of the State of Arizona. In the event of litigation, jurisdiction and venue shall be in Cochise County.

9. Alternative Dispute Resolution

Pursuant to A.R.S. § 12-1518, disputes under this Agreement shall be resolved through the use of arbitration when the case or lawsuit is subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.

10. Entire Agreement

This Agreement, including Attachment A, contains the entire, integrated agreement of the parties and there are no oral agreements, understandings, or representations relied upon by the parties. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral.

11. Amendments and Modifications

No modification or amendment of any provision of this Agreement shall be valid unless it is in writing and signed and executed by the party against whom it is sought to be enforced.

12. Notice

All notices and other communication authorized or required in this Agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail in a postage pre-paid envelope addressed to the other party to the address provided herein.

Sharon Gilman
Deputy County Administrator
1415 Melody Ln, Bldg G
Bisbee, AZ 85603

Luis Pedroza
Deputy City Manager/City Treasurer
425 10th Street
Douglas, AZ 85607

13. Assignability

The City agrees that it shall not assign or transfer its interest in this Agreement without the written consent of the Cochise County Board of Supervisors.

14. Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

15. Waiver

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all parties. The failure of either party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement 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.

16. Severability

In case one or more provision of this Agreement is held invalid or voidable, the validity of the remaining provisions shall not be affected thereby, and the Agreement shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

17. Legal Agreement

This Agreement is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this Agreement, each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement and understands the meaning of all terms contained herein and agrees to their application and enforceability.

18. Uncontrollable Forces

No party shall be considered to be in default of this Agreement if failure of performance is due to an uncontrollable event. The term “uncontrollable event” means any cause beyond the control of the party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.

19. Relationship of the Parties

Each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, associate, or any other representative capacity of the other party. Each party shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein. Nothing contained in this Agreement confers any right to any person or entity not a party to this Agreement.

20. Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

APPROVALS

By the signatures below of their duly authorized officials, the parties agree to, and accept, the terms of this Agreement.

**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 Agreement 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*

Denise Riden, Deputy County Attorney

By: _____
Denis Fitzgibbons, City Attorney

Date: 9/26/2024

Date: _____

Attestation

Attestation

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

By: _____
Alma Andrade, City Clerk