

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COCHISE COUNTY
AND
CITY OF DOUGLAS
REGARDING EFFORTS TO BUILD COMMERCIAL PORT OF ENTRY
IN DOUGLAS, ARIZONA**

This Memorandum of Understanding (MOU) is entered into on this ____ day of _____, 2021 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 port of entry in Cochise County to divert commercial traffic from the Raul H. Castro Port of Entry; and

WHEREAS, James Ranch Road, 4.5 miles west of the City of Douglas limits is the designated location for construction of a proposed commercial port of entry; and

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

WHEREAS, the purpose and intent of this MOU is to coordinate funding and construction for utilities related to the development of the commercial port of entry on James Ranch Road; and

WHEREAS, the City will operate and maintain Water and Wastewater Utilities services for the proposed commercial port of entry and any new developments that may occur in the region in the future; and

WHEREAS, to facilitate the intent and purpose of this MOU, necessary information, stakeholder collaboration and partnerships, and other resources from the City and County

may be needed to develop utilities for the commercial port of entry, known as the “Project”; and

WHEREAS, the City possesses capacity and experience to apply for, administer, and carry out funding opportunities that will provide resources to assist in completing the Project; and

WHEREAS, the County possesses capacity for specific technical and planning knowledge and resources to assist the City in the Project.

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

1. TERM

The term of this MOU shall run from _____, through _____, or until the completion of the Project, whichever occurs later. This MOU shall automatically terminate upon completion of the project, unless terminated pursuant to section 10 (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

a. General

The City will provide technical assistance and services to the County, in a professional manner, for successful completion of the Project as outlined in Section 2.b. Scope of Services, directly below. It is understood that during the development of the Project, additional services or activities may be required to establish utilities for a commercial Port of Entry. 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 expanding utility connections in rural areas. It is further understood the City’s ability to participate and complete the Project t may be contingent upon the flexibility of the City’s established budget.

b. Scope of Services

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

- i. Pursue funding opportunities, including but not limited to submission of North American Development Bank (“NADBank”) Project Development Assistance Program Grant that will be used for engineering design of Phase 1 water and wastewater system to serve the commercial port of entry and surrounding areas. Phase 1 is defined in the “Proposed Douglas Port of Entry Water and Wastewater Feasibility Report” dated December 11, 2020, as prepared by Stantec Consulting Services Inc for Cochise County.
- ii. If grant funding is obtained, the City shall manage the grant(s) and manage the design, planning, and construction of the Project.
- iii. As approved by the Mayor and Council allocate City funds towards the Project.
- iv. Engage with County and other regional partners on land planning to expand City utility service area boundaries to include Phase 1 service area. Update City water and wastewater master plans and zone planning areas.
- v. Provide ongoing Community Stakeholder Support and Planning Guidance: City seeks to leverage the planning efforts and accomplishments of this Project to educate regional planning stakeholders and generate awareness of the project.
- vi. Maintain ongoing engagement with regional community stakeholders to organize and collaborate on the development of the Project which consists of: Periodic virtual and in person discussions on current progress, stuck-points, relationship introductions, useful resources, etc.
- vii. Provide any other support as deemed reasonable by the City for the completion of the Project.

3. COUNTY'S ROLE

a. General

Cochise County will facilitate and support the City's procurement of the necessary resources outlined in the Scope of Services listed above in a professional manner for the successful completion of the Project. It is also understood that the procurement of the necessary resources outlined in the Scope of Services is contingent upon the cooperation and collaboration of various organizations, both public and private, throughout the County. It is further understood the County's ability to participate and aid in the completion of the Project may be contingent upon the flexibility of the County's established budget.

b. Scope of Facilitation and Services

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

- i. Provide a mutually agreed upon In-Kind Match, subject to reasonable limitations, to meet the requirements of available funding sources.
- ii. May act as co-applicant on funding sources where applicable, including NADBank grant applications.
- iii. Concurrently share known available funding sources for the support of the Project.
- iv. As approved by the Board, allot a portion of the County's American Rescue Plan Act ("ARPA") funds to the Project as allowable under 31 CFR Part 35, Department of Treasury Interim Final Rule.
- v. Support in the identification of County stakeholders needed to successfully complete the Project.
- vi. Introduce City to potential partners, County leadership, and stakeholders associated with the successful completion of the Project.

- vii. Identify, Map, and Analyze current infrastructure and assets. Mapping of County assets includes public utilities and public Rights of Way.
- viii. Consult with City to ensure compliance with procurement policies that may be required by any state or federal grants.
- ix. Advise on land planning for economic development opportunities.
- x. Provide any other support as deemed reasonable by the County for the completion of the Project.

4. RECORD RETENTION

Each party shall retain records and documents relating to the performance of services under this MOU 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 advancing future broadband related planning or project implementation.

5. 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.

6. 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 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.

7. 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 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.

8. ASSIGNMENTS

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

9. 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.

10. 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 the best interest of the region 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 MOU.

11. MISCELLANEOUS PROVISIONS

a. 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 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 MOU.

c. 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.

d. Cancellation

This MOU 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 MOU 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 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.

g. Incorporation of Documents

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

h. 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.

i. 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.

j. 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.

k. 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.

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 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.

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

FOR COCHISE COUNTY

Ann English, Chair
Cochise County Board of Supervisors

Date: _____

ATTEST

Kim Lemons, CPCC
Clerk of the Board

APPROVED AS TO FORM

Christine J. Roberts 12/2/2021

Christine J. Roberts, Esq.
Chief Civil Deputy County Attorney

FOR CITY

Donald Huish, Mayor
City of Douglas

Date: _____

ATTEST

Alma Andrade, City Clerk
City of Douglas

APPROVED AS TO FORM

Denis Fitzgibbons, Esq.
City Attorney