

CERTIFICATION

I, Brenda Aguilar, certify that I am the duly appointed and City Clerk of the City of Douglas, Arizona and I further certify that the foregoing Resolution is a true and correct copy of the original Resolution No. 15-1112 passed at a Regular Meeting of the Douglas City Council held on the 9th day of September 2015, and further certify that said meeting was held pursuant to law and was in all aspects a true and lawful meeting and that all proceedings thereunder were held in accordance with the applicable law.

Dated this 14th Day of September, 2015.

-SEAL-


Brenda Aguilar, City Clerk

RESOLUTION NO. 15-1112

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF DOUGLAS, COCHISE COUNTY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN COCHISE COUNTY AND THE CITY OF DOUGLAS FOR ACQUISITION OF RIGHT-OF-WAY FOR THE PORT OF ENTRY PROJECT.

WHEREAS, a new port of entry has been proposed west of the City of Douglas at the junction of James Ranch Road and the international border with Mexico ("Proposed POE"); and,

WHEREAS, the Proposed POE would be beneficial to the economic development of the City and Cochise County; and,

WHEREAS, as a joint exercise of their powers, Cochise County and the City of Douglas wish to enter into an agreement to acquire a right-of-way for a Proposed POE; and,

WHEREAS, for the Proposed POE to be viable, there needs to be a road from the Proposed POE to Highway 80 and this requires a right-of-way; and,

WHEREAS, pursuant to A.R.S. § 11-952, the County and City are authorized to enter into this intergovernmental agreement for joint and cooperative action for acquiring such ROW; and,

WHEREAS, Cochise County Board of Supervisors has set aside funds to be used for the acquisition of the ROW needed for the construction of the access roadway that would connect the new and proposed POE to Highway 80 along the James Ranch Road alignment; and,

WHEREAS, Cochise County will provide up to \$97,000 for the acquisition of land as well as to provide any technical support in conjunction with this ROW acquisition.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the City of Douglas, Arizona, as follows:

Section 1. Authorize and approve the Intergovernmental Agreement to be entered into by the parties provides the terms and conditions and is attached hereto as Exhibit "A", and incorporated herein by reference; and are found to be in the best interest of the City of Douglas.

Section 2. The City Manager and the City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement and any related documents necessary to consummate the transaction contemplated by the agreement for and on behalf of the City of Douglas.

Section 3. The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of the Intergovernmental Agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 9th day of September, 2015.

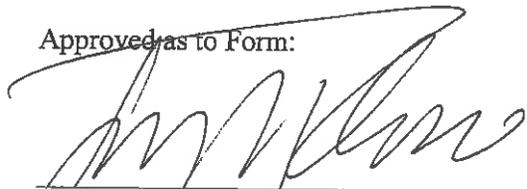

Daniel Ortega II, Mayor

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Attest:


Brenda Aguilar, City Clerk

Approved as to Form:


Juan Pablo Flores, City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN
COCHISE COUNTY
AND
THE CITY OF DOUGLAS
FOR ACQUISITION OF ROW FOR PORT OF ENTRY**

THIS AGREEMENT is made by and between Cochise County (“County”) and the City of Douglas (“City”), for the joint exercise of their powers in acquiring right-of-way for a proposed new port of entry near the City.

WHEREAS, a new port of entry has been proposed near the City at the junction of W. James Ranch Road and the international border with Mexico (“Proposed POE”); and

WHEREAS, the Proposed POE would be beneficial to the economic development of the City and Cochise County; and

WHEREAS, for the Proposed POE to be viable, there needs to be a road from the Proposed POE to Highway 80; and

WHEREAS, to build a road from the Proposed POE to Highway 80, there first needs to be a right-of-way for such road (the “ROW”); and

WHEREAS, pursuant to A.R.S. § 11-952, the County and the City are authorized to enter into this intergovernmental agreement for joint and cooperative action for acquiring such ROW.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the parties agree as follows:

- 1. Purpose.** The purpose of this Agreement is to set out the understanding of the parties as to their mutual responsibilities and rights regarding the acquisition of the ROW.
- 2. Term.** This Agreement shall become effective July 30, 2015. This Agreement shall continue to be binding upon the parties until July 30, 2025, unless terminated as provided herein. Modifications may be made only upon execution of a written amendment signed by the parties hereto.
- 3. County’s Obligations.** The County will provide up to \$97,000 to the City for acquisition of the ROW. The County may provide technical support to the City in acquiring ROW. This Agreement shall not create any duty or obligation of the County to take the lead in acquiring the ROW or contribute to or participate in the construction of a road.
- 4. City’s Obligations.** The City will use its best efforts to acquire the ROW. When it acquires a portion of the ROW, the City will notify the County of the need to draw down the funds to be provided by the County pursuant to Paragraph 3. If the Proposed POE is not built and completed

by July 30, 2025, the City will reimburse the County for any amounts used to acquire ROW pursuant to Paragraph 3. Such amounts will be due and payable on or before August 15, 2025.

5. Workers' Compensation. For the purposes of Workers' Compensation, an employee of either party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of, the other party pursuant to this Agreement, is deemed to be an employee of both the party who is the employee's primary employer and the party under whose jurisdiction or control or within whose jurisdictional boundaries the employee is then working, as provided in AR.S. § 23-1022(D).

1. The primary employer party of such employee shall be solely liable for the payment of Worker's Compensation benefits payable as the result of the employee's participation in such activity.
2. Each party to this Agreement shall comply with the provisions of AR.S. § 23-1022(E) by posting the required public notice.

6. Termination for Cause. This Agreement may be terminated by either party for cause for material default of any obligations under this Agreement; provided, however, that termination by the County shall not affect its payment obligations for past services.

7. Cancellation for Conflict of Interest. This Agreement may be canceled pursuant to A.R.S. § 38-511, which are incorporated herein by reference.

8. Compliance with Non-Discrimination Laws. To the extent applicable, the parties shall comply with all laws and regulations, including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and State Executive Order No. 99-4 which mandates that all persons, regardless of race, religion, handicap, color, age, sex, political affiliation or national origin shall have equal access to employment opportunities.

9. Audit and Records. Both parties agree to retain all accounts, reports, files and other records relating to this Agreement for five (5) years after termination of this Agreement and to open such records for reasonable inspection and audit by the other party during that period.

10. Indemnification. Each party agrees to be responsible for the conduct of its operations and performance of Agreement obligations and for any accidents or injuries to persons or property arising out of acts or omissions by its officers, agents or employees acting in the course or scope of their position, agency or employment while performing duties undertaken pursuant to this Agreement. This indemnification provision shall survive termination of the Agreement.

11. General Provisions.

- 11.1 The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein shall create any rights or

duties in favor of any potential third party beneficiary or other person, agency or organization.

- 11.2 This Agreement contains the entire understanding of the parties hereto. There are no representations or other provisions other than those contained herein, and any amendment or modification of this Agreement shall be made in writing and signed by the parties to this Agreement.
- 11.3 Should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect with those offending portions omitted.
- 11.4 This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the intergovernmental agency agreements and mandatory contract provisions of state agencies required by statute or executive order.
- 11.5 The headings used in this Agreement are for convenience only and are not a substantive part of this Agreement.
- 11.6 Neither party may assign a duty or responsibility under this Agreement without the prior written consent of the other party.

12. Counterparts. This IGA may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the IGA.

13. Notice. Written notice shall be provided by sending the notice by first class mail to:

For County: Cochise County Administrator
1415 Melody Lane, Building G
Bisbee, AZ 85603

For City: Douglas City Manager
425 10th St.
Douglas, AZ 85607

IN WITNESS WHEREOF, the parties provide the following resolutions of approval:

CITY OF DOUGLAS

COCHISE COUNTY



Carlos A. De La Torre, City Manager

Pat Call, Chairman

Date: 9-9-15

Date: _____

Attest:

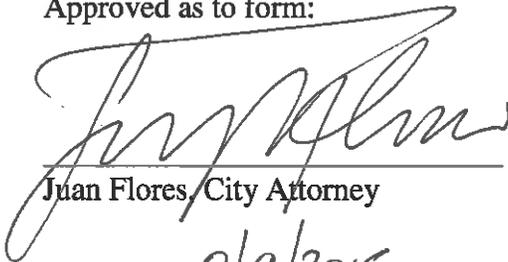

Brenda Aguilar
City Clerk

Attest:

Arlthe Rios
Clerk of the Board of Supervisors

The above Agreement, which is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned legal counsel for each of the parties who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to each of the parties.

Approved as to form:


Juan Flores, City Attorney

Date: 9/9/2015

Approved as to form:

Britt Hanson, Chief Civil Deputy
Cochise County Attorney

Date: _____

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COCHISE COUNTY
AND
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WHEREAS, the Proposed POE would be beneficial to the economic development of the City and Cochise County; and

WHEREAS, for the Proposed POE to be viable, there needs to be a road from the Proposed POE to Highway 80; and

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COCHISE COUNTY



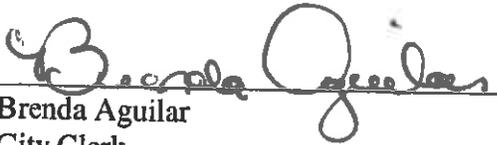
Carlos A. De La Torre, City Manager

Pat Call, Chairman

Date: 9-9-15

Date: _____

Attest:

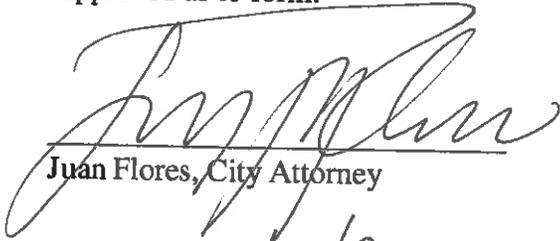

Brenda Aguilar
City Clerk

Attest:

Arlethe Rios
Clerk of the Board of Supervisors

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Approved as to form:


Juan Flores, City Attorney

Date: 9/9/2015

Approved as to form:

Britt Hanson, Chief Civil Deputy
Cochise County Attorney

Date: _____