

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF TOMBSTONE AND COCHISE COUNTY
FOR
COOPERATIVE ROAD MAINTENANCE**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the City of Tombstone (City), a political subdivision of the State of Arizona and Cochise County (Cochise), a political subdivision of the State of Arizona.

RECITALS

1. City and Cochise have statutory authority to enter into intergovernmental agreements for joint and cooperative action pursuant to A.R.S. § 11-952.

2. For purposes of maximizing efficiency, fiscal responsibility, and general logistics, the parties intend to allocate road maintenance responsibilities in a manner which involves working across jurisdictional boundaries.

3. Cochise agrees to maintain a portion of a public road, located within the incorporated limits of the City in exchange for the City's agreement to maintain a portion of a public road in an unincorporated area of Cochise County.

NOW, THEREFORE, City and Cochise, in consideration of the benefits and obligations herein provided, mutually agree as follows:

1. **Purpose.** The purpose of this Intergovernmental Agreement is to set forth the responsibilities of the parties for the maintenance of portions of certain roads within the incorporated limits of the City and unincorporated area of Cochise County.

2. **Obligations of Cochise.** Cochise shall provide highway maintenance services on the portion of Charleston Road within City limits identified on the map attached as Exhibit A hereto, consisting of approximately 1.09 miles. Maintenance shall include the reconstruction of the chip sealed road surface and thereafter continuing annual maintenance for a period of five (5) years. Continuing maintenance shall include crack sealing, ditch/shoulder repair, etc., as deemed necessary.

///

3. **Obligations of City.** City shall provide maintenance services on the portion of Monument Road outside City limits, and within the unincorporated area of Cochise County, identified on the map attached as Exhibit B hereto, consisting of approximately 0.93 miles. Maintenance shall include blading/dirt surface reshaping and ditch/shoulder repair every four (4) to six (6) weeks or more often as needed for a period of five (5) years.

4. **Right of Entry.** Execution of this Agreement grants Cochise the right to enter upon City rights-of-way for covered segments, at no cost, for the purposes of this Agreement, and likewise grants City the right to enter upon County rights-of-way for covered segments, at no cost, for purposes of this Agreement.

5. **Permits.** The parties shall cooperate with one another in securing any necessary approval, permission or permits required to perform the services agreed to herein.

6. **Term and Termination of Intergovernmental Agreement.**

6.1. *Effective Date.* This Intergovernmental Agreement shall be upon execution and shall remain in effect for a period of five (5) years from the effective date, unless earlier terminated by either party under Section 6.2. below.

6.2. *Termination.* City or Cochise may terminate this Intergovernmental Agreement by giving sixty (60) days written notice to the other of such termination.

7. **Indemnification.**

7.1. *Mutual Indemnity.* To the fullest extent permitted by law, each party to this Agreement shall indemnify, defend and hold the other party, its officers, employees and agents, harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, liens, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, or employees, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.

7.2. *Notice.* In addition to any other notice required by law, each party shall notify the other in writing within thirty (30) days of the receipt of any claim, demands, suits or judgments against the receiving party for which the party intends to invoke the provisions of this Article. Each party shall keep the other party informed on a current basis of its defense of any claims, demands, suits, or judgments under this Article.

8. **Insurance.** When requested by the other party, each party shall provide proof to the other of their worker's compensation, automobile, accident, property damage, and liability coverage or program of self-insurance.

9. **Books and records.** Each party shall keep and maintain proper and complete books, records and accounts, which shall be open for inspection and audit by duly authorized representatives of any other party at all reasonable times.

10. **Construction of Agreement.**

10.1. *Entire Agreement.* This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

10.2. *Amendment.* This agreement shall not be modified, amended, altered or changed except by written agreement signed by both parties.

10.3. *Construction and Interpretation.* All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

10.4. *Captions and Heading.* The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.

10.5. *Severability.* In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

11. **Legal Jurisdiction.** Nothing in this Intergovernmental Agreement shall be construed as either limiting or extending the legal jurisdiction of City or Cochise.

12. **No Joint Venture.** It is not intended by this Intergovernmental Agreement to, and nothing contained in this Intergovernmental Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer- employee relationship between City and any Cochise employees, or between Cochise and any City employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

13. **No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affects the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of streets and highways different from the standard of care imposed by law.

14. **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 Agreement.

14.1. Anti-Discrimination. The parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration. Reference: Governor of Arizona Executive Order No. 2005-30, dated 10/28/05.

14.2. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

14.3. A.R.S. § 38-511. This Intergovernmental Agreement is subject to the provisions of A.R.S. § 38-511.

15. **Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

16. **Force Majeure.** A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term uncontrollable forces shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

17. **Notification.** All notices or demands upon any party to this agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

///

///

///

Notice to City:

Director, Public Works
611 E. Allen St.
Tombstone, Arizona 85638
(520) 457-3415

Notice to Cochise:

Director, Community Development
1415 Melody Lane, Building F
Bisbee, Arizona 85603
(520) 432-9318

18. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or inequity or by virtue of this Agreement.

IN WITNESS WHEREOF, City has caused this Intergovernmental Agreement to be executed by the Mayor, and attested to by the City Clerk, and Cochise has caused this Intergovernmental Agreement to be executed by the Chair of its Board of Supervisors and attested to by its Clerk of the Board.

ATTEST:

COCHISE COUNTY

Arlethe Rios, Clerk of the Board

Richard Searle, Chair
Board of Supervisors

ATTEST:

CITY OF TOMBSTONE

Brenda Ikirt, City Clerk

Dusty Escapule, Mayor

INTERGOVERNMENTAL AGREEMENT DETERMINATION

The foregoing Intergovernmental Agreement between the City of Tombstone and Cochise County has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, which have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

CITY OF TOMBSTONE

By: _____
Randy Bays, City Attorney

COCHISE COUNTY

By: _____
Britt Hanson, Chief Civil Deputy
County Attorney

Exhibit A

Location of Charleston Road
From Tombstone City limits, northeast
approximately 1.09 miles, to Louis St



LOUIS ST

CHARLESTON RD

OLD MILL RD

OWLS NEST RD

OREGON TRL

City
County

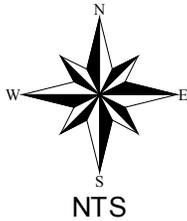


Exhibit B

LONELY LN

City

County

Location of Monument Road
From Tombstone City limits, northwest
approximately 0.93 miles, to the entrance
of Schieffelin Monument

MONUMENT RD

County

City

MOONLIGHT RD

