

Intergovernmental Agreement
Between
Pima County and Cochise County
For
Cooperative Highway Maintenance
(San Pedro River Road)

This Intergovernmental Agreement (“Agreement”) is entered into by and between Pima County (“Pima”), a body politic and corporate of the State of Arizona, and Cochise County (“Cochise”), a body politic and corporate of the State of Arizona.

RECITALS

1. Pima and Cochise have statutory authority under A.R.S. § 11-952 to enter into intergovernmental agreements for joint and cooperative action.
2. Pima and Cochise have authority under A.R.S. § 11-251 to lay out, maintain, control and manage public roads within their respective jurisdictions and under A.R.S. Title 28, Chapter 19 to establish, construct, and maintain county highways.
3. For purposes of maximizing efficiency, fiscal responsibility, general logistics, the parties intend to allocate roadway maintenance responsibilities in a manner, which involves working across jurisdictional boundaries.

4. Cochise agrees to maintain San Pedro River Road in exchange for Pima's agreement to compensate Cochise for those services.

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

AGREEMENT

1. **Definition of Road.** For purposes of this Agreement, "Road" means San Pedro River Road, which is an approximately 10-mile-long unpaved public road located in Pima County, commencing at the Pima-Cochise county line and terminating at the Pima-Pinal county line. The Road is a continuation of North Cascabel Road in Cochise County.
2. **Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the maintenance of the Road.
3. **Obligations of Cochise.** Cochise will provide highway maintenance services, specifically grading the Road. Cochise will maintain the Road in the same manner as it maintains North Cascabel Road within Cochise's boundaries and, at a minimum; Cochise will grade the Road no less than once every eight weeks.
4. **Obligations of Pima.** Pima will pay Cochise \$13,500.00 annually, invoiced semi-annually in advance in the amount of \$6,750.00 for each successive six-month period. Pima will make such payment within thirty days of receiving the invoice.
5. **Emergency.** Cochise's obligation to grade the Road will be suspended if, due to an emergency, Cochise does not have equipment and operators available to grade the Road. Cochise shall determine what constitutes an emergency. If Cochise determines an emergency exists that suspends its obligations to grade the Road, it will promptly notify Pima of the emergency and the anticipated length of the emergency, and the date of that notice commences the suspension of Cochise's maintenance obligations. Cochise will also notify Pima at the conclusion of the emergency, and as of the date of that notice, Cochise's obligation to maintain the Road will resume. During the period of emergency, Pima may either wait for Cochise's equipment and operators or use its own equipment and operators. Pima's annual payment for maintenance under this Agreement will be reduced by a percentage of the total amount that equals the percentage of the year during which Cochise's maintenance obligations were suspended under this Section 5.
6. **Updates.** All modifications, additions, or subtractions to this Agreement, other than changes that by law or county policy require consideration by either Pima's or Cochise's Board of Supervisors, shall be made by Addendum approved by Pima County Administrator and the Cochise County Administrator. This document should be reviewed on an annual basis.

7. **Right of Entry.** Execution of this Agreement by Pima grants Cochise the right to enter upon Pima rights of way at no cost for the purposes of this Agreement.
8. **Permits.** The parties shall cooperate with one another in securing any necessary approvals, permissions, or permits required to perform the services agreed to herein.
9. **Term and Termination.**
 - 9.1. *Effective Date.* This Agreement shall be effective on the date it is executed by the last party to sign and shall remain in effect for a period of ten (10) years from the effective date, unless earlier terminated by either party as provided herein.
 - 9.2. *Termination.* Pima or Cochise may terminate this Agreement for any reason by giving sixty days' written notice to the other of such termination.
 - 9.3. *Effect of Termination.* Upon termination by either party, Pima's payment obligation to Cochise is limited to payment for services rendered before the date of the notice of termination.
10. **Indemnification.** Each party (as "Indemnitor") agrees to indemnify and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") 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/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
11. **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. If contractors are used, the contractor's insurance shall be reviewed and approved by the other jurisdiction.
12. **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.
13. **Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of Pima or the Cochise.
14. **No Joint Venture.** It is not intended by this 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 Pima and Cochise employees, or between Cochise and Pima employees. Neither party shall be liable for any debts, accounts, obligations, or 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.

15. **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 effect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of roadways different from the standard of care that is reasonable for these roadways at these locations.
16. **Compliance with Laws.** The parties shall comply with applicable federal, state, and local laws, rules, regulations, standards, and executive orders, without limitation to those designated within this Agreement.
 - 16.1. *Anti-Discrimination.* The provisions of A.R.S. § 41-1463 and Executive Order Number 75-5, as amended by Executive Orders Number 99-4 and 2009-9, issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.
 - 16.2. *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.
 - 16.3. *A.R.S. § 38-511.* This Agreement is subject to the provisions of A.R.S. § 38-511.
 - 16.4. *Legal Arizona Workers Act Compliance.* Each party warrants to the other that it will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the warranting party's employment of its employees, and with the requirements of A.R.S. § 23-214(A) (together, the "State and Federal Immigration Laws"). Each party further agrees to ensure that each contractor who performs work associated with this Agreement (i) complies with the State and Federal Immigration Laws, and (ii) ensures that any subcontractor who performs work for the contractor complies with the State and Federal Immigration Laws.

Each party shall further require that each contractor who performs work subject to this Agreement advise each subcontractor of the party's rights, and the subcontractor's obligations, with respect to this subsection, by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to subcontractor's employees, and with the requirements of A.R.S. § 23-214(A). Subcontractor further agrees that [Pima or Cochise] may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any breach of the warranty of compliance with the State and Federal Immigration Laws by either party, by that party's contractor doing work subject to this Agreement, or by a subcontractor of that party's contractor doing work subject to this Agreement shall be deemed to be a material breach of this Agreement subjecting the breaching party to

penalties up to and including suspension or termination of this Agreement. A party in breach of the warranty of compliance with State and Federal Immigration Laws shall further be liable to the other party for any additional costs attributable directly or indirectly to remedial action under this subsection.

Either party may, at any time, inspect the books and records of the other party in order to verify the other party's compliance with the State and Federal Immigration Laws.

17. **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.
18. **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.
19. **Notification.** Each party shall notify the other in writing within thirty (30) calendar 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. All notices to 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 Pima:

Director
Department of Transportation
201 N. Stone Ave., 4th floor
Tucson, Arizona 85701
(520) 724-6410

Notice to Cochise:

Director
Community Development
1415 Melody Lane, Building F
Bisbee, Arizona 85603
(520) 432-9314

20. **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 in equity or by virtue of this Agreement.

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In Witness Whereof, Pima has caused this Agreement to be executed by the Chair of its Board of Supervisors, and Cochise has caused this Agreement to be executed by the Cochise Council, upon resolution of the Council and attested to by its Chair.

ATTEST:

COCHISE COUNTY:

Clerk of the Board

Ann English
Chair

Date

Date

ATTEST:

PIMA COUNTY:

Clerk of the Board

Sharon Bronson
Chair

Date

Date

Approval

The foregoing Agreement between Pima County and Cochise County has been reviewed by the undersigned, and is hereby approved as to content.

Priscilla S. Cornelio, P.E.
Director
Pima County Department of Transportation

Date

Director
Cochise County

Date

Intergovernmental Agreement Determination

The foregoing Agreement between Pima and the Cochise has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who 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.

Pima County:

Deputy County Attorney

Date

Cochise County:

Deputy County Attorney

Date