

Amended

MEMORANDUM OF UNDERSTANDING

AMONG

THE ARIZONA DEPARTMENT OF TRANSPORTATION,

THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA DIVISION

AND THE USDA, FOREST SERVICE, SOUTHWESTERN REGION

REGARDING

THE CONSTRUCTION, OPERATION AND MAINTENANCE OF

HIGHWAYS IN ARIZONA CROSSING NATIONAL FOREST

SYSTEM LANDS

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**AMENDED MEMORANDUM OF UNDERSTANDING
AMONG
THE ARIZONA DEPARTMENT OF TRANSPORTATION,
THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA DIVISION, AND
THE USDA, FOREST SERVICE, SOUTHWESTERN REGION**

BACKGROUND

I. PURPOSE

This Memorandum of Understanding (MOU) supersedes the previously Amended MOU, 10/16/2008). It outlines policies and procedures for the Arizona Department of Transportation (ADOT), Arizona Division of Federal Highway Administration (FHWA), and the USDA, Forest Service, Southwestern Region, (USFS Region 3), to establish and improve cooperative working relationships specifically by:

- A. Developing a mutual understanding of the missions, goals, constraints and responsibilities of the USFS Region 3, ADOT and FHWA as they relate to ADOT Highways crossing National Forest System lands;
- B. Defining USFS Region 3, ADOT and FHWA organizational structures and identifying areas of cooperation to facilitate coordinated work efforts;
- C. Developing procedures and standardized methods for communication and coordination; and
- D. Minimizing duplication of work and streamlining work processes.

This MOU provides for a coordinated approach to accomplish National Forest System (NFS) land and resource management, and transportation development and operation management in completing USFS Region 3, ADOT and FHWA goals and objectives. Such coordination is subject to the respective authorities of each agency, and is designed to reduce and, if possible, eliminate duplication of work; to establish procedures for streamlining work processes; to ensure each agency is provided sufficient lead time for proper sequential function; to make more efficient use of and share available resources; and to develop and execute action programs which maximize responsiveness to public needs and concerns. Such programs, projects and activities complement the agencies missions and are in the best interests of the public.

II. AUTHORITY

The general authorities for this MOU include, but are not limited to, the following:

- A. Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613); and 5 U.S.C. 301, as amended.
- B. National Forest Management Act of 1976 (P.L. 94-588, 90 Stat. 2949) as amended.
- C. 36 CFR Part 219 National Forest System Land Management Planning.
- D. Various Federal Aid Highway Acts codified in Title 23 of the U.S. Code (U.S.C.)
- E. National Environmental Policy Act of 1969 (Pub.L. 91-190, 83 Stat. 852), as amended (42 U.S.C. 4321 et seq.).
- F. Title IV of the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577; 82 Stat. 1098), as amended (31 U.S.C. 6501 et seq.).
- G. Federal Grants and Cooperative Agreement Act of 1977 (Pub.L. 95-224; 92 Stat. 3), as amended (31 U.S.C. 6301 et seq.).
- H. Arizona Revised Statutes Sections 28-332 and 28-334.

III. ORGANIZATION AND WORK FLOW

Refer to the "Guidelines" description of each agency's organizational structure and a map depicting the geographic boundaries of each agency's organization. All parties to this MOU agree to utilize the "Guidelines" as a best practice approach to project delivery. Furthermore, all parties have the understanding the "Guidelines" may be modified / amended in the future without amending this MOU by mutual consent. [The most current version on the Guidelines will be available to all parties and will be posted on the ADOT's webpage.](#)

IV. AGENCY RESPONSIBILITIES

- A. FHWA is responsible for administration and management of the Federal-aid highway program, compliance with the National Environmental Policy Act (NEPA) consistent with 23 C.F.R. 771 and application for right-of-way appropriation consistent with 23 C.F.R. 710.601. FHWA is responsible for ensuring that the Highway Agent, when designing and constructing a Title 23 highway will comply with the conditions set forth in the Letter of Consent.
- B. ADOT is responsible for the design, construction, operation, maintenance and management of the State highway system in Arizona. ADOT is responsible for project NEPA and National Historic Preservation Act Section 106 compliance and approvals as outlined in MOUs developed under 23 U.S.C. §§ 326 and 327 and

approved by FHWA and ADOT and, as such, is the Highway Agent for the purposes of this MOU. The Highway Agent is the organization that undertakes the construction and/or maintenance of the highway facility.

- C. The USFS Region 3 is responsible for the protection and multiple-use management of USFS Region 3 lands and resources for the use and benefit of the public, and for integration of the development of State highway systems with Forest transportation systems needed to accomplish this purpose. USFS Region 3 will act as cooperating agency or in limited situations as a joint lead agency in the development of any required NEPA document (EA/EIS). The USFS Region 3, acting as the Agent for the FHWA, will be responsible for the monitoring and enforcement of the conditions set forth in the Letter of Consent, including written notification, to the Highway Agent, of violations of these conditions and any subsequent action necessary to enforce compliance of the conditions. ADOT is responsible for compliance with the conditions set forth in the Letter of Consent. If necessary, the USFS Region 3 will request assistance from the FHWA.
- D. ADOT has continued responsibility for the safety of the traveling public on state highways and interstate facilities. ADOT is not required to coordinate with USFS Region in advance of implementing safety mitigation measures on state highways and interstate facilities within established rights-of-way except when safety mitigation includes new construction, reconstruction or other activities affecting NFS lands. USFS Region 3 will coordinate with ADOT on any new permanent road construction or modifications to existing roads by the USFS Region 3 which connect within the State's easement.

V. OBJECTIVES

It is the objective of each party to cooperatively design and implement projects that promote transportation efficiency and safety, minimize impacts to the environment and integrate with USFS Region 3 Land Resource Management Plans.

- A. It is the objective of the USFS Region 3, in collaboration with other Federal agencies, State Agencies, tribal governments and the public, to provide for the protection and multiple-use management of NFS lands and resources for the use and benefit of the public.
- B. It is the objective of ADOT to provide a safe and efficient transportation system, together with the means of revenue collection, licensing and safety programs, which meets the needs of the citizens and visitors to Arizona.
- C. It is the objective of the FHWA to provide leadership, expertise, resources, and information to improve the quality and safety of Arizona's highway system and intermodal connectors in cooperation with their partners, while protecting natural and cultural values.

VI. AREAS OF COOPERATION

The USFS Region 3, ADOT and FHWA recognize the need to work together to achieve maximum efficiency from their respective agency funds and personnel. Accomplishing maximum efficiency requires established procedures for timely disposition of issues or problems associated with public road systems on NFS lands in Arizona such as planning, scoping studies, design, construction, operation and maintenance. Therefore, the parties hereto agree to:

- A. Cultivate a mutual understanding of each other's missions, goals and objectives.
- B. Develop effective communication by: 1) taking advantage of existing and new forums for issue identification; 2) defining and eliminating communication barriers; and 3) sharing information in a timely manner using appropriate communication methods, such as E-mail, video conferencing, and meetings.
- C. Achieve effective conflict resolution by: 1) developing and implementing a process for resolving conflicts (see Section VIII of this MOU); 2) maintaining a commitment to use the process developed; 3) honoring past commitments; 4) maintaining a solutions-oriented approach; and 5) recognizing the need for flexibility, especially to meet public safety needs.
- D. Streamline and improve timeliness of review processes by: 1) early involvement of all relevant parties through proactive participation; 2) effective and efficient use of expertise and resources; 3) striving for single points of contact; and 4) eliminating unnecessary paperwork and processing steps.
- E. Coordinate planning processes by: 1) holding timely coordination meetings, at a minimum, yearly coordination meetings 2) integrating transportation needs with USFS Region 3 Land and Resource Management Plans (LRMP); 3) using an interdisciplinary approach throughout all processes; and 4) developing, where possible, consensus on the environmental review process.
- F. Develop and maintain effective teamwork by: 1) undertaking additional training in team building and partnering; 2) striving for mutual respect; and 3) evaluating the resulting partnership on an annual basis.
- G. Adhere to the agreed procedures for Easement Development.
- H. Agree to utilize when applicable the Highway Easement Deed as identified and attached hereto this MOU.

In addition, the USFS Region 3, ADOT and FHWA agree to develop a programmatic approach to streamline interagency coordination of the NEPA process and reduce repetitive documentation for low impact projects.

VII. COORDINATION MEETINGS

The USFS Region 3, ADOT and FHWA agree to hold coordination meetings as follows:

- A. Local coordination meetings or contacts between each USFS Region 3 Forest Supervisor's Office and corresponding ADOT Districts will be held as often as needed, but not less frequently than annually. Attending these meetings will be the Forest Land Staff Officers and appropriate USFS Region 3 Ranger staffs, FHWA and ADOT District Engineers. The meetings will be scheduled by joint action of the Forest Engineer and ADOT District Engineers. Other groups, agencies and individuals, as deemed necessary or beneficial to the intent of the meeting, may be invited to attend. The purpose of these local meetings are:
 - 1. Share information and keep each other informed of progress on ongoing projects and the partnering effort, including developing action items.
 - 2. Review agency responsibilities, programs and priorities, including preliminary plans which may develop into future cooperative efforts.
 - 3. Identify additional opportunities for improvement that may require the attention and/or support of the next level of management and/or should be included on the agenda for the State meeting.
 - 4. Work out exchanges of materials, workers or equipment on a temporary basis and on specific case related work areas where such an arrangement would be to the mutual benefit of the USFS Region 3, ADOT and FHWA. Any exchanges will require a separate written agreement.
 - 5. Discuss issues that emerge from other meetings or activities.
- B. Coordinate ADOT highway maintenance activities with the local USFS Region 3 District Ranger. A written annual maintenance plan shall be prepared by ADOT and submitted to the USFS Region 3 to address items requiring USFS Region 3 coordination and assistance such as additional clearing outside the original clearing limits, disposal of slough material, changes in road drainage patterns, material sources and storage, rock scaling and similar actions. The USFS Region 3 shall review and comment on the plan within three (3) weeks of receipt from ADOT. Areas of concern should be jointly reviewed.
- C. Emphasize the importance of cooperation and the timely resolution of issues and jointly agree to participate in "partnering". Partnering is a process for improving communications, encouraging cooperation, assisting decision making and developing and sustaining a level of trust among the partners. It is also agreed that USFS Region 3 representatives shall attend ADOT sponsored partnering meetings for highway design and construction projects on NFS lands.
 - I. The identification and protection of historic properties is the responsibility of our combined agencies. The National Historic

Preservation Act, Section 106 purpose is to evaluate the effects of any federal undertaking on cultural resources as early in the NEPA process as possible. A historic property evaluation and/or study(s) must be completed for the proposed project and submitted to the State Historic Preservation Officer (SHPO) for review and concurrence. Historic resources and any potential impact to them must be identified.

ADOT, through MOUs developed under 23 U.S.C. §§ 326 and 327, has assumed FHWA's responsibilities as lead Federal Agency for this requirement. At the initiation of a Federal-aid project on USFS Region 3 lands, USFS Region 3 and ADOT agree to hold a coordination meeting as needed to adopt a process to comply with this Federal requirement.

Listed below are the goals of the coordination meeting regarding historic property issues:

- I. ADOT will be the lead for Section 106 issues.
- II. The USFS Region 3 and ADOT will jointly develop a scope of work for the project.
- III. The USFS Region 3 and ADOT will agree to jointly review all relevant work products produced.
- IV. The USFS Region 3 and ADOT will establish an escalation chart for the resolution of issues similar to the one in Section VIII of this MOU.
- V. The USFS Region 3 and ADOT will produce a project schedule. The schedule will require project milestones and review timelines.
- VI. The USFS Region 3 and ADOT will agree to meet these project milestones and deadlines established.

D. Statewide meetings as necessary, but not less frequently than annually, and preferably after concluding all the local meetings, will be scheduled by joint action of the USFS Region 3 Regional Engineer, ADOT State Engineer's Office, and FHWA Division Administrator or their respective designees. Agenda items and participants will be discussed as needed before the meeting. Three meetings shall be held among ADOT, FHWA and USFS Region 3 each year: Forest Highways Meeting to discuss the Public Lands Highway (PLH) Program and the State Five-Year Highway Construction Programs, the Annual Invasive Species / Herbicide Group Coordination Meeting and the Annual USFS Region 3, ADOT and FHWA meeting. The purpose of the State meetings are:

1. Discuss each agency's short and long range plans, annual work plans, and programming processes to provide adequate time for submission of budget requests to ensure simultaneous scheduling of programs and completion of scheduled work.

2. Develop and maintain procedures designed to coordinate USFS Region 3, ADOT and FHWA work on a statewide basis.
3. Review priorities and designate critical functional and/or geographical areas.
4. Conduct joint evaluations of the coordination efforts and review of plans and/or completed work.

VIII. CONFLICT RESOLUTION

All parties hereto agree to work cooperatively to minimize conflicts in implementation of this MOU. Where an impasse has been reached, each party agrees to involve relevant agency management as necessary to resolve the conflict as quickly as possible. Final resolution of any continuing impasse will be a matter for determination by the USFS Region 3 Regional Forester, ADOT Transportation Director, and FHWA Division Administrator or their respective designees.

A. If an impasse arises, it shall be escalated as follows:

<u>USFS REGION 3</u>	<u>ADOT PROGRAM DEVELOPMENT</u>	<u>ADOT CONSTRUCTION</u>	<u>ADOT MAINTENANCE</u>	<u>FHWA</u>
Ranger District Representative which is customarily delegated to the Project Engineer	Project Manager and/or Group Manager	Resident Engineer	District Maintenance Engineer or Assistant District Engineer	Area Engineer or Right-of-Way Officer
Ranger District Representative which is customarily delegated to the Forest Engineer	Deputy State Engineer - Design	District Engineer and/or Deputy State Engineer – Operations or Assistant Division Administrator	District Engineer and/or Deputy State Engineer – Operations or Assistant Division Administrator	Senior Engineering Manager – Operations
Forest Supervisor	Division Director – IDO, TSMO or MPD	Division Director – IDO	Division Director - IDO and/or State Engineer	Assistant Division Administrator
Regional Forester which is customarily delegated to the Regional Engineer	Transportation Director which is customarily delegated to the State Engineer/Deputy Director for Transportation	Transportation Director which is customarily delegated to the State Engineer/Deputy Director for Transportation	Transportation Director which is customarily delegated to the State Engineer/Deputy Director for Transportation	Division Administrator

IDO – Infrastructure Delivery and Operations

TSMO – Transportation Systems Management and Operations

MPD – Multimodal Planning Division

- B. When representatives at the lowest level for each party have reached an impasse and have agreed to escalate, a meeting date will be established within a time acceptable to all parties, but no more than five (5) working days. At that time, representatives from both levels will meet to discuss the issues related to the impasse and attempt resolution. If an agreement cannot be reached, then the issue

will be escalated to the next level and a meeting date will be established within a time acceptable to all parties, but no more than five (5) working days. At that time, representatives from all three levels will meet to discuss the issues related to the impasse and attempt resolution. If an agreement cannot be reached, the issue will be escalated to the highest organizational level and a meeting date will be established within a time acceptable to all parties, but no more than five (5) working days. At that time, all parties at all levels will meet to resolve the issue.

- C. The parties hereto agree that any resolution to an impasse secured through the conflict resolution process set forth in this section shall be communicated in writing to all parties (with any communication including the technical, policy or business rationale for the resolution).

IX. ADMINISTRATION

- A. The US Federal government will be responsible for errors, omissions or negligence of its officers, employees or agents to the extent provided by Congress under the Federal Tort Claims Act, 28 U.S.C. 1346 (b), 2041(b), and 2671 – 2680, as amended.
- B. All parties to this MOU shall comply with all Federal Statutes, including but not limited to those relating to nondiscrimination, employments and civil rights.
- C. This MOU is subject to all applicable Federal and State laws and regulations. Nothing in this MOU is intended to conflict with any Federal statute or regulation. If a conflict is determined to occur, applicable Federal statutes and regulations shall control.
- D. This MOU shall become effective upon signature by all parties and shall continue in effect unless and until it is terminated by written request of at least one of the parties hereto. This MOU shall terminate following the expiration of 30 days after written notice to the other parties of intent to terminate by any party.
- E. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed
- F. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority.
- G. Any information furnished to the USFS Region 3 or FHWA under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552). Any information furnished to ADOT under this MOU is subject to Arizona Public Records Law (A.R.S. § 39-101 *et seq*).

H. Principal Contacts:

Program Contact	Agency
Alan Hansen, (602) 382-8964	FHWA, AZ Division
Marjorie Apodaca (505) 842-3852	USDA USFS Region 3
Todd Emery, P.E., (602) 712-8274	ADOT

Administrative Contact	Agency
Alan Hansen, (602) 382-8964	FHWA, AZ Division
Monica Martinez, (505) 842-3161	USDA USFS Region 3
Todd Emery, P.E., (602) 712-8274	ADOT

- I. This instrument in no way restricts the Parties Hereto from participating in similar activities with other public or private agencies, organizations, and individuals.
- J. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as its representatives are authorized to act in their respective areas for matters related to this agreement.
- K. RESPONSIBILITIES OF PARTIES. The USFS Region 3, ADOT and FHWA and their respective agencies will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

X. SIGNATURES

In witness whereof, the parties hereto have executed this MOU as of the last date written below:

USDA, USFS Region 3, Southwestern Region

333 Broadway SE
Albuquerque, NM 87102

SANDRA WATTS

Digitally signed by SANDRA WATTS
Date: 2020.01.31 17:01:30 -07'00'

Elaine Kohrman, Acting Regional Forester, Region 3

Date _____

Federal Highway Administration, Arizona Division

4000 Central Ave.
Phoenix, AZ 85012-3500

KARLA SNYDER PETTY

Digitally signed by KARLA SNYDER
PETTY
Date: 2020.02.12 07:45:39 -07'00'

Karla Petty, Arizona Division Administrator

Date _____

Arizona Department of Transportation

206 South 17th Avenue
Phoenix, AZ 85007

DocuSigned by:


John Halikowski, Director

Date 2/24/2020



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE GOVERNMENT DIVISION /
TRANSPORTATION SECTION

DAWN NORTHUP
DIVISION CHIEF COUNSEL
ELI D. GOLOB
ASSISTANT ATTORNEY GENERAL
DIRECT LINE: 602-542-8842
E-MAIL: ELI.GOLOB@AZAG.GOV

MEMORANDUM OF UNDERSTANDING
DETERMINATION

A.G. Contract No. P0012019002890 (MOU No. 19-0007529-I), an Agreement between public agencies, the Arizona Department of Transportation, The Federal Highway Administration, Arizona Division and the USDA, Forest Service, Southwestern Region, has been reviewed pursuant to A.R.S. § 28-332 and 28-334, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 24, 2020

MARK BRNOVICH
Attorney General



ELI D. GOLOB
Assistant Attorney General
Transportation Section

EDG/sp/8556625

ADDENDUM NUMBER 1

TO MEMORANDUM OF UNDERSTANDING

(MOU 19-0007529-I) AMONG

THE ARIZONA DEPARTMENT OF TRANSPORTATION,

THE FEDERAL HIGHWAY ADMINISTRATION, ARIZONA DIVISION,

AND THE USDA, FOREST SERVICE, SOUTHWESTERN REGION

REGARDING THE CONSTRUCTION, OPERATION AND

MAINTENANCE OF HIGHWAYS IN ARIZONA

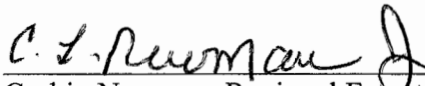
CROSSING NATIONAL FOREST SYSTEM LANDS

1. After receipt of written agreement from the Forest Service, ADOT will submit the appropriate Highway Easement Deed to FHWA for signature. (See Illustration 1 for the template deed). The template deed specified in Illustration 1 has been certified as legally sufficient by legal counsel for ADOT and FHWA, and such certification is on file at ADOT and the FHWA Arizona Division Office. This form deed may be augmented only by insertion of the ADOT project and parcel information, National Forest information, legal description, signatures and notarization information. Any other additions or modifications to these form deeds will require separate certifications of legal sufficiency by legal counsel for ADOT and FHWA.

2. After signature by FHWA, ADOT will cause the easement deed to be recorded in the appropriate county or counties and submit a copy of the recorded deed to the Forest Service Forest Supervisor and to the FHWA Realty Officer.

In witness whereof, the parties hereto have executed this Addendum as of the last date written below:

USDA, Forest Service, Southwestern Region
333 Broadway SE
Albuquerque, NM 87102


Corbin Newman, Regional Forester

Date August 26, 2008

Federal Highway Administration, Arizona Division
One Arizona Center
400 East Van Buren Street, Suite 410
Phoenix, AZ 85004-2285


Robert E. Hollis, Arizona Division Administrator

Date 8/28/08

Arizona Department of Transportation
206 South 17th Avenue
Phoenix, AZ 85007


Victor Mendez, Director

Date 09/02/08

+WHEN RECORDED RETURN TO
ARIZONA DEPARTMENT
OF TRANSPORTATION,
R/W OPERATIONS SEC. (612E)
205 S. 17TH AVENUE
PHOENIX, AZ 85007

PROJECT: «PROJECT»
«RW_No»
SECTION: «SECTION»
PARCEL: «PARCEL»
NFS: «FOREST»

EXEMPT PER A.R.S. 11-1134-A2

HIGHWAY EASEMENT DEED

THIS DEED is made this _____ day of _____, 20____, by and between the **UNITED STATES OF AMERICA**, acting by and through the **DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION**, hereinafter referred to as the **DEPARTMENT**, and the **STATE OF ARIZONA**, acting by and through its **DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the **GRANTEE**:

WITNESSETH:

WHEREAS, the **GRANTEE** has filed application under the provisions of the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317*) for the right-of-way of a highway over certain federal land under the jurisdiction of the Department of Agriculture - U.S. Forest Service in the State of Arizona; and

WHEREAS, the Arizona Division Administrator of the Federal Highway Administration, pursuant to delegation of authority from the Secretary of Transportation, has determined that an easement over the land covered by the application is reasonably necessary for a right-of-way for a highway in connection with the construction of Project «FedConst»; and

WHEREAS, the Department of Agriculture, acting by and through the U. S. Forest Service, in its consent to the appropriation of the federal land, has agreed to the transfer by the **DEPARTMENT** of an easement over the land to the **GRANTEE**; and

WHEREAS, the Arizona Department of Transportation, Arizona Division of the Federal Highway Administration and the U.S. Forest Service have entered into a Memorandum of Understanding, dated October 20, 2005, for which this deed form was developed.

NOW THEREFORE, the DEPARTMENT, as authorized by law, and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubtitleA, Office of the Secretary, Part 21, nondiscrimination in federally-assisted programs of the Department of Transportation (49 CFR 21.1 - 21.23) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. Sections 2000d- 2000d-4), does hereby grant to the GRANTEE an easement for right-of-way for the construction, operation, and maintenance of a highway (including control of access thereto from adjoining lands, if a controlled access highway) and use of the space above and below the established grade line of the highway pavement for highway purposes on, over, across, in, and upon the following described federal land within the United States in the «Forest» National Forest, County of «County», State of Arizona, Gila and Salt River Meridian, Arizona:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Subdivision</u>
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TABULAR LEGAL HERE

as shown on the right of way plans for Project «Project»/«RW_No»/«Section» on file in the Office of the State Engineer at Phoenix, Arizona.

Subject however, to the following terms and conditions:

1. This easement is subject to outstanding valid claims, if any, existing on the date of this grant, and the GRANTEE shall obtain permissions as may be necessary on account of any such claims;
2. The GRANTEE and the Forest Supervisor shall make determination as to the necessity for archaeological and paleontological reconnaissance and salvage within the right-of-way, and such reconnaissance and salvage to the extent determined necessary because of construction or reconstruction of the highway facility, is to be undertaken by the GRANTEE in compliance with the acts entitled “An Act for the Preservation of American Antiquities”, approved June 8, 1906 (34 Stat. 225, 16 U.S.C. 432-433), the National Historic Preservation Act of 1966 as amended through 2000 (16 U.S.C. 470 et seq), the Archaeological Resources Protection Act of 1979 (93 Stat. 721, 16 U.S.C. 470 aa et seq), the Native American Grave Protection and Repatriation Act approved November 16, 1990 (104 Stat. 3048, 25 U.S.C. 3002(d):43 CFR Part 10.4), and State laws where applicable.

3. The easement herein granted shall terminate twenty (20) years from the date of the execution of this deed by the United States of America in the event construction of a highway on the right-of-way is not started during such twenty-year-period.
4. The easement herein granted is limited to use of the described right-of-way and the space above and below the established grade line of the highway for the purposes of construction, reconstruction, maintenance, and operation of the highway in accordance with the approved plans, as identified at the end of the property description above and does not include the grant of any rights for non-highway purposes or facilities:

Provided, that the right of the Forest Service to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto or would interfere with the free flow of traffic or impair the full use and safety of the highway, and, in any case, the GRANTEE and the Federal Highway Administration shall be consulted prior to the exercise of such rights;

Provided further, that the Forest Service may locate National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of construction clearing limits; and

All signing within the right-of-way, except temporary emergency fire suppression signing, will be approved by the GRANTEE and compliant with the Manual on Uniform Traffic Control Devices (MUTCD), where applicable.

5. The design, construction, operation, and maintenance of highways situated on this right-of-way will be in accordance with the provisions of Title 23, United States Code (USC)—Highways, and amendments; the regulations contained in Title 23, Code of Federal Regulations (CFR)—Highways and amendments; Section 4 (f) of the United State Department of Transportation Act, codified in both Title 23 U.S.C. §138 and Title 49 U.S.C. §303 the provisions of the Federal-Aid Policy Guide; the construction specifications of the State highway department as approved by the Federal Highway Administration for use on Federal-aid projects, the Memorandum of Understanding between the Arizona Department of Transportation and the Arizona Division of the Federal Highway Administration and the Forest Service, dated October 20, 2005, including any amendments, supplements or modifications thereto, and any other federal and state laws that are applicable or may become applicable.

The Forest Supervisor will be provided an opportunity to review plans relative to effects, if any, that the project works as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and of use of the right-of-way that would have effect on the protection and utilization of the land under the administration of the Forest Service are to be

mutually agreed upon by the Forest Supervisor and the **GRANTEE** by conference or other communication during the preparation of the plans and specifications for each construction project, and the plans shall be revised, modified, or supplemented to meet the approval of the Forest Supervisor, or when deemed appropriate, supplemented by written stipulation between the Forest Supervisor and the **GRANTEE**, prior to the start of construction.

The final design and construction specifications for any highway construction project on the right-of-way shall be presented to the Forest Supervisor for approval; construction or reconstruction shall not begin until such approval is given: Provided, that if it is subsequently deemed necessary that the approved plans, specifications or stipulations be amended or supplemented, any amendment or supplement shall be approved by the Forest Supervisor and the **GRANTEE** before construction or reconstruction begins.

6. Consistent with highway safety standards, **GRANTEE** shall;
 - a. protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits;
 - b. provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway;
 - c. vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Forest Supervisor and the **GRANTEE** prior to completion of the highway;
 - d. maintain all terracing, water bars, leadoff ditches, or other preventive works that may be required to protect adjacent National Forest System lands. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
7. The **GRANTEE** shall not establish the following within the right-of-way, unless shown on approved construction plans, without first obtaining approval of the Forest Supervisor: borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas.
8. The **GRANTEE** may maintain the right-of-way clearing by means of chemicals only IF the Forest Supervisor has given specific written approval. Application for such approval must be in writing and must specify the time, method, chemicals, and the exact portion of the right-of-way to be chemically treated.
9. The **GRANTEE** may remove mineral material and vegetation as necessary for the construction, maintenance, and safe operation of the highway subject to the following:

- a. the Forest Service will retain the right to any merchantable timber within the boundaries of the appropriation. The **GRANTEE** shall notify the Forest Service when timber is scheduled to be removed. The Forest Service will determine what method of sale or storage of the timber shall be utilized;
 - b. the Forest Service will retain the right to any mineral materials within the boundaries of the appropriation. The **GRANTEE** shall notify the Forest Service when mineral material is scheduled for removal and use within or disposal outside the appropriation area. The Forest Service will determine if the material has value and what method shall be utilized to recover any such value for the United States.
10. Upon termination of this easement, the **GRANTEE** shall remove, within a reasonable time, any structures and improvements, and shall restore the site to a condition satisfactory to the Forest Supervisor, unless an alternative agreement is reached by both parties and documented in writing. If the **GRANTEE**, within a reasonable period, fails to remove the structures or improvements and restore the area, or to implement the alternative agreement, the Forest Supervisor may order the removal and disposal of any improvements and restore the area at **GRANTEE'S** expense.
11. When need for the easement herein granted shall no longer exist and the area has been reasonably rehabilitated to protect the public and environment, the **GRANTEE** shall give notice of that fact to the **DEPARTMENT** and the Forest Service and the rights herein granted shall terminate and the land shall revert immediately to the full control of the Forest Service or assigns.
12. The **GRANTEE**, in consideration of the conveyance of said land, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns that:
 - a. no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed;
 - b. the **GRANTEE** shall use said land so conveyed in compliance with all requirements imposed by or pursuant to Title 49, Transportation, subtitled A, Part 21, Code of Federal Regulations (49 CFR §21.1 to §21.23), pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §2000d to §2000d-4).
13. In the event of breach of any of the above mentioned nondiscrimination conditions, the **DEPARTMENT** shall have the right to re-enter said land and facilities on said land, and the above-described land and facilities shall thereupon revert to the full control of the Forest Service or assigns.

PARCEL: «Parcel»

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IN WITNESS WHEREOF, I, _____, Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of authority in me vested by law, have hereunto subscribed my name as of the day and year first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

By _____
Division Administrator

State of _____)
County of _____) ss

I, _____, a Notary Public in and for the State of _____, do hereby certify that on this the _____ day _____, 20____, before me personally appeared, _____, Division Administrator, Federal Highway Administration, and acknowledged that the foregoing instrument bearing date of _____, 20____, was executed by him/her in his/her official capacity and by authority in her/him vested by law, for the purposes and intents in said instrument described and set forth, and acknowledged the same to be her/his free act and deed as Division Administrator, Federal Highway Administration.

Witness my hand and seal of office this _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)

Commission Expires _____

PARCEL: «Parcel»

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In compliance with the conditions set forth in the foregoing deed, the **STATE OF ARIZONA**, certifies, and by the acceptance of this deed, accepts the right-of-way over certain land herein described and agrees for itself, its successors and assigns forever to abide by the conditions set forth in said deed.

By _____
Chief Right of Way Agent

State of _____)
County of _____) ss

I, _____, a Notary Public in and for said County and State, hereby certify that _____, whose name as _____, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she in his/her capacity as such _____ executed the same voluntarily on this day.

Given under by hand and seal of office this _____ day of _____, 20____.

NOTARY PUBLIC

(SEAL)

Commission Expires _____