

+WHEN RECORDED RETURN TO:  
CITY OF PEORIA  
DEVELOPMENT AND ENGINEERING  
9875 NORTH 85<sup>TH</sup> AVENUE  
PEORIA, ARIZONA 85345

PROJECT: PEO-0(225)T/000 MA PEO T0157  
SECTION: PINNACLE PEAK RD-HAPPY VALLEY RD  
NEW RIVER MULTI-USE PATH  
BLM #:

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**, herein after referred to as the **GRANTOR**, acting by and through the **DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION (FHWA)**, and the **CITY OF PEORIA**, hereinafter referred to as the **GRANTEE**:

### WITNESSETH:

**WHEREAS**, the Department of Interior – Bureau of Land Management (BLM) has received a request from the Federal Highway Administration (FHWA) for the appropriation of and immediate right of entry to BLM-managed lands within the State of Arizona, for use by the City of Peoria, the nominee-recipient of the Arizona Department of Transportation (ADOT), for Project PEO-0(225)T/000 MA PEO T0157, pursuant to the Act of Congress of August 27, 1958, as amended (*23 U.S.C. Section 317*), for the right-of-way of a multi-use path over certain federal land under the jurisdiction of the Department of Interior – Bureau of Land Management (BLM) in the State of Arizona; and

**WHEREAS**, the Arizona Division Administrator of the FHWA, 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 multi-use path in connection with the construction of Project PEO-0(225)T/000 MA PEO T0157; and

**WHEREAS**, the BLM, acting by and through the FHWA, has agreed to appropriate federal land for this use and to transfer by the **GRANTOR** an easement over the land to the **GRANTEE**; and

**WHEREAS**, the Arizona Department of Transportation, Arizona Division of the FHWA and the BLM have entered into a Memorandum of Understanding, dated October 20, 2005, from which this deed form was developed.

**NOW THEREFORE**, the **GRANTOR**, as authorized by law, does hereby grant to the **GRANTEE**, in perpetuity, an easement for right-of-way for the construction, operation, and maintenance of a multi-use path as described in 23 U.S.C. §103 and appurtenant facilities, including the right to control the access thereto and use of the space at, above, and below grade, on the land located in the State of Arizona, County of Maricopa, Gila and Salt River Meridian described as:

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Subdivision</u>
4N	1E	12	SW¼NW¼

As shown on the right of way plans for Project PEO-0(225)T/000 MA PEO T0157 on file in the Office of the City Engineer of the City of Peoria, Arizona.

Subject however, to the following terms and conditions:

1. This easement is granted subject to any and all valid, existing claims on the easement area in effect as of the date of this conveyance. The **GRANTEE** agrees to resolve any disputes on such claims and obtain any permission an account of such claims as may be necessary for the uses and purposes of the easement to proceed;
2. The **GRANTEE** and the BLM Field Manager 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 multi-use path 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 multi-use path for the purposes of construction, reconstruction, maintenance, and operation thereof 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-multi-use path purposes or facilities. The right of the BLM to use or authorize the use of any portion of the right-of-way for other 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 pathway, and, in any case, the **GRANTEE** and the Federal Highway Administration shall be consulted prior to the exercise of such rights.

However, the BLM may locate BLM and other Department of Interior information signs on the portions of the right-of-way outside of construction clearing limits. 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 multi-use paths 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 BLM, 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 BLM Field Manager 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 BLM for the

purposes for which such land is being administered. Those features of design, construction, and maintenance of the path 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 BLM are to be mutually agreed upon by the BLM Field Manager 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 BLM Field Manager, or when deemed appropriate, supplemented by written stipulation between the BLM Field Manager 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 BLM Field Manager for approval. Construction or reconstruction shall not begin until such approval is given. 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 BLM Field Manager 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 BLM Field Manager 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 BLM 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 BLM Field Manager: borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for multi-use path 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 BLM Field Manager 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 BLM will retain the right to any merchantable timber within the boundaries of the appropriation. The **GRANTEE** shall notify the BLM when timber is scheduled to be removed. The BLM will determine what method of sale or storage of the timber shall be utilized;
  - b. The BLM will retain the right to any mineral materials within the boundaries of the appropriation. The **GRANTEE** shall notify the BLM when mineral material is scheduled for removal and use within or disposal outside the appropriation area. The BLM 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 BLM Field Manager, 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 BLM Field Manager 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 **GRANTOR** and the BLM and the rights herein granted shall terminate and the land shall revert immediately to the full control of the BLM 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).

In the event of breach of any of the above mentioned nondiscrimination conditions, the **GRANTOR**, or its assigns, shall have the right to re-enter the easement and any facilities thereon, thereby terminating the easement and vesting exclusive ownership and control of the land and facilities in the **GRANTOR**.

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 \_\_\_\_\_

In compliance with the conditions set forth in the foregoing deed, the **CITY OF PEORIA**, 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 \_\_\_\_\_  
Administrator

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\_\_\_\_\_.

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NOTARY PUBLIC

(SEAL)

Commission Expires \_\_\_\_\_

#### APPROVAL

This Highway Easement Deed has been reviewed by the undersigned Attorney who has determined that it is in the proper form and is within the powers and authority granted to the City of Peoria, State of Arizona. No opinion is expressed as to the authority of the remaining parties, other than the City or its agencies, to enter into said agreement.

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(ATTORNEY NAME)

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DATE

ATTORNEY

LICENSED TO PRACTICE LAW IN THE STATE OF ARIZONA