ADOT File No.: 08-039I
AG Contract No.: P001-2008-001366
Project: US 93,Hoover Dam MP 2-17
Section: MP 3.3
TRACS No.: H5347 01C
Budget Source Item No.:

COLLECTION AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
ARIZONA GAME & FISH DEPARTMENT

THIS AGREEMENT is entered into this 26 day of March 2008, between ARIZONA DEPARTMENT OF TRANSPORTATION ("ADOT") and the ARIZONA GAME AND FISH DEPARTMENT ("DEPARTMENT") pursuant to the February 2008 Memorandum of Understanding ("MOU") between the Arizona Game and Fish Commission ("Commission") and ADOT, the terms of which are incorporated hereinafter referred. ADOT and the DEPARTMENT are collectively referred to as "Parties".

I. RECITALS

1. ADOT is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ADOT.

2. The DEPARTMENT acts under the authority of the Commission and is authorized to enter into this Agreement pursuant to A.R.S § 17-231(B)(7). The DEPARTMENT has authorized the undersigned to execute this Agreement on behalf of the DEPARTMENT.

3. Incident to a State road widening project on US 93, ADOT has agreed to widen the current design of the wildlife overpass (*for Bighorn Sheep)*, at MP 3.3 along the US 93 from 70' to 100' estimated at $600,000.00.

4. Pursuant to Paragraph V(A)(6) of the MOU, the Commission has agreed that the DEPARTMENT will contribute monies for the construction of the wildlife overpass.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. Upon execution of this Agreement or no later than April 1, 2008, ADOT shall invoice the Department for an amount of $300,000.00 for costs associated with the widening of the wildlife overpass.

2. No later than 15 days after receiving the aforementioned invoice from ADOT, the Department shall remit a payment of $300,000.00 to ADOT for costs associated with the widening of the wildlife overpass.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein.

2. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

3. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

4. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes § 12-1518.

5. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation (ADOT) Joint Project Administration 205 S. 17th Avenue, Mail Drop 637E Phoenix, Arizona 85007 (602) 712-7525 (602) 712-7424 Fax	Arizona Game and Fish Department Attn: Director 5000 W. Carefree Highway Phoenix, Arizona 85086 (602) 942-3000

6. This Agreement is subject to all applicable provisions of the Americans with Disability 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. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Illegal Immigration: The parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference.

8. Non-Availability of Funds: Every payment obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds for the continuance of this Agreement are not allocated or are not available, this Agreement shall terminate automatically on the date of expiration of funding. In the event of such termination, the Parties shall incur no further obligation or liability under this Agreement other than for payment of services rendered prior to the expiration of funding.

9. Other Agreements: This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals.

10. Compliance with Applicable Law: All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws and regulations.

11. Severability: In the event that any such provision of this Agreement or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

12. Integration: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter herein and accurately sets forth the rights, duties, and obligations of each Party. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions of this Agreement may be abrogated, modified, rescinded, or amended in whole or in part only by mutual written consent executed by the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

STATE OF ARIZONA
GAME AND FISH DEPARTMENT

By _____
DUANE SHROUFE
DIRECTOR

STATE OF ARIZONA
Department of Transportation

By _____
SAM MAROUFKHANI, P.E.
Deputy State Engineer, Development

TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line:
602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

COLLECTION AGREEMENT DETERMINATION

A.G. Contract No. P0012008001366 (**JPA 08-039-I**), a Collection Agreement between The State of Arizona and Arizona Game & Fish Department, has been reviewed pursuant to A.R.S. § 28-401, as amended, 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: March 27, 2008

TERRY GODDARD
Attorney General

Susan Davis

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:175140
Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ARIZONA GAME AND FISH COMMISSION
AND
THE ARIZONA DEPARTMENT OF TRANSPORTATION

I. PURPOSE

This Memorandum of Understanding (MOU) is entered into by the Arizona Game and Fish Commission (Commission) and Arizona Department of Transportation (ADOT) to provide for environmental stewardship and wildlife permeability and minimize the risk associated with wildlife on highways. This MOU is expected to enhance the conservation of wildlife species, promote habitat connectivity for wildlife, and minimize the interaction of motorists and wildlife along highways.

This MOU is intended to foster and enhance stewardship through communication and cooperative projects between the two agencies including, but not limited to, the following categories: cooperative project pre-planning and streamlining; maintenance of habitat connectivity; maintenance of ecological integrity; inventory, monitoring, and biological studies; wildlife impacts related to vehicles, pollution, recreational access, habitat loss, and invasive species; wildlife mitigation; information and education; and conflict resolution.

Impetus is given to developing this working relationship because of the projected increase in population and consequent demand for movement of goods, services, and people in Arizona and the impacts highways are having on Arizona's wildlife and environment. Arizona is rapidly reaching a crossroads where development is colliding with the ecological and natural resources of Arizona, which, if not addressed, will ultimately, affect the quality of life of all residents and visitors. Vehicle mobility and biodiversity are both State priorities, but one does not have to come at the expense of the other if both agencies cooperate. Fostering such cooperation is the focus of this MOU.

II. AUTHORITY

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

A. This MOU is entered into pursuant to Arizona Revised Statutes (A.R.S.) Sections 11-951 through 11-954, as amended between the State of Arizona acting by and through the Commission and ADOT.

B. The Commission is responsible for the conservation and management of all wildlife species of the State of Arizona. The Arizona Game and Fish Department (AGFD) acts as the administrative agent under the authority of the Commission pursuant to A.R.S. Section 17-231. The AGFD's general jurisdiction and duties are delineated in A.R.S.

Section 17-211 (D). The Commission and its agent are authorized to enter into this MOU under A.R.S. Section 17-231 (B) 7.

C. ADOT's general jurisdiction and duties are delineated in A.R.S. Sections 28-332 and 28-334. ADOT is authorized to enter into this MOU under A.R.S. Section 28-401.

III. GENERAL OBJECTIVES

A. It is the objective of the AGFD to "conserve, enhance, and restore Arizona's diverse wildlife resources and habitats through aggressive protection and management programs, and to provide wildlife resources and safe watercraft and off-highway vehicle recreation for the enjoyment, appreciation, and use by present and future generations." The AGFD is a primary resource on issues dealing with wildlife in Arizona.

B. It is the objective of ADOT to "provide products and services for a safe, efficient, cost-effective transportation system that links Arizona to the global economy, promotes economic prosperity and demonstrates respect for Arizona's environment and quality of life."

C. One of ADOT's "Strategic Issues" is environmental stewardship, whereby environmental management will be integrated into its business practices.

D. While the objectives of the AGFD and ADOT are significantly different in certain respects, they share a complementary interest in environmental stewardship.

IV. SPECIFIC OBJECTIVES

The AGFD and ADOT recognize the need to:

A. Cooperate through all stages of ADOT project development to produce effective plans for wildlife mitigation.

B. Integrate important habitat connectivity areas in Arizona into transportation plans.

C. Define key areas of wildlife/vehicle conflict and develop means to quantify, prioritize, and minimize or eliminate these conflict areas.

D. Develop effective and efficient passage structures and barriers for various species of wildlife to make highways less hazardous for wildlife and motorists and minimize the effects of habitat fragmentation.

E. Develop ways to maintain recreational access where allowed, while at the same time restricting undesirable wildlife passage.

F. Cooperate to ensure maximum benefit and consideration for mitigation efforts to support healthy wildlife and fish habitats and to maintain wildlife habitat connectivity.

G. Work together to investigate ways to minimize highway impacts to endangered or sensitive species and their habitats and aquatic fauna.

H. Work together to prevent the spread of non-native species and identify opportunities to restore invaded areas.

I. Elevate public awareness of highway ecology issues.

J. Monitor highways to delineate areas of high wildlife/vehicle collisions.

K. Monitor crossing structures and fences to determine their effectiveness in funneling wildlife across highways.

V. AREAS OF COOPERATION

A. The AGFD and ADOT mutually agree to:

1. Cooperate to seek ways to make highways less hazardous for wildlife and lessen impacts on important habitats.

2. Seek opportunities and funding for cooperative projects and activities dealing with highway/wildlife issues. Develop a mutual understanding of each other's missions, goals, and objectives.

3. Discuss needs, actions, and priorities associated with this MOU.

4. Develop an early coordination strategy that allows the AGFD to provide substantive wildlife resource recommendations to ADOT during the long range regional planning, shorter-term project pre-design, project design, and maintenance phases, and to provide continuous consultation as needed.

5. Meet annually, or as needed, to discuss matters affecting this MOU, including: (a) evaluating the coordination process; (b) discussing current ADOT long-range planning and project development activities for which the AGFD has provided recommendations; (c) identifying cooperative work priorities for the coming year; (d) evaluating the resulting partnership; and (e) determining whether the MOU should be maintained as is or be modified.

6. Facilitate efficient fund exchange between the AGFD and ADOT for projects dealing with highway/wildlife issues by investigating separate cooperative agreements or contracts that can be used to share resources in the form of funding, manpower, equipment, supplies, or other items.

7. Develop a coordination strategy for informing the education and outreach divisions of each agency regarding newsworthy information that should be disseminated to the general public.

8. Discuss management opportunities to avoid and/or minimize the spread of exotic, non-native species and involve other agencies as appropriate.

9. Discuss avoidance of important habitats during the alternatives analyses.

10. Develop a mechanism for evaluating the success of wildlife mitigation measures.

11. Cooperatively integrate into transportation planning, pre-design, design, and maintenance, data gathered from ongoing highway/wildlife research, available wildlife linkage resource maps, available data from the road kill database, and other sources jointly identified as necessary and useful to conserve habitat and establish habitat connectivity for terrestrial wildlife and aquatic species.

12. Create a working group to investigate ways to minimize highway impacts to aquatic fauna.

B. The AGFD agrees to:

1. Make available to ADOT its biological expertise and knowledge of wildlife in conducting investigations, consulting on highway/wildlife issues, identifying important wildlife areas, planning highways, determining key areas of habitat connectivity, developing ways and means of mitigating highway effects, and monitoring the effectiveness of wildlife mitigation measures.

2. Through biological investigations, make recommendations regarding effective techniques and processes available to ADOT that will aid in transportation planning, construction and maintenance.

3. Cooperate with ADOT by identifying key staff members from AGFD to coordinate with ADOT on development projects. The identified staff member would attend project meetings from the beginning to the end of the project formulation process for any projects the AGFD has expressed concerns related to wildlife issues. A different staff member can be assigned to separate projects.

C. ADOT agrees to:

1. Consider recommendations made by AGFD regarding effective techniques and processes that will aid in transportation planning, construction and maintenance.

2. Invite identified key staff members from AGFD to coordinate on projects.

3. Make available to AGFD appropriate data during various phases of planning, design, and maintenance of roadways.

VI. CONFLICT RESOLUTION

A. The AGFD and ADOT agree to work cooperatively to minimize conflicts in the 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 of determination by the Director, ADOT, and Director, AGFD, or their respective designees.

B. If an impasse has been reached, it shall be escalated as follows:

	ADOT Development / Planning*	**ADOT Operations***	**AGFD**
First Line of Communication	Representatives working on current issue	Representatives working on current issue	Representatives working on current issue
First Escalation	EPG Technical Section Manager / TPD Project Manager	NRMG Lead Planner & District Maintenance Engineer	Program Supervisor
Second Escalation	EPG Group Manager & Development Section Manager / TPD Section Manager	NRMG Group Manager & District Engineer	Branch Manager
Third Escalation	OES Director & Deputy State Engineer – Development / TPD Director	OES Director & Deputy State Engineer Operations	Wildlife Management Assistant Director
Fourth Escalation	State Engineer / TPD Director	State Engineer	Deputy Director
Final Escalation	ADOT Director	ADOT Director	AGFD Director

EPG = Environmental Planning Group; NRMG = Natural Resource Management Group; OES=Office of Environmental Services; TPD= Transportation Planning Division.
*Path/column chosen depends on the type of issue involved.

C. When the representatives at the lowest level for the AGFD and ADOT have reached an apparent impasse, a meeting date will be established within 30 days. At that time, representatives from this level 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 30 days from the last meeting date. Representatives from that level and the lower level will meet to discuss the issues related to the impasse and attempt resolution. The same process applies to the second, third, and fourth escalations. If an agreement cannot be reached after the fourth escalation, the issue will be escalated to the highest organizational level and a meeting date will be established within 30 days from the last organizational level meeting. At that time, all parties at all levels will meet to resolve the issue.

D. The parties agree that any resolution to an impasse secured through the conflict resolution process will be communicated in writing to the parties (with any communication including the technical, policy, or business rationale for the resolution).

VII. ADMINISTRATION

A. Each party shall fund any activities that it may undertake pursuant to this MOU. However, if the voluntary assistance identified involves a substantial commitment of personnel or other resources, the parties may enter into an appropriate interagency agreement. Nothing in this MOU shall be construed as obligating any of the parties to expend in excess of appropriations authorized by law and administratively allocated for the purposes set forth in this MOU.

B. All parties to this MOU shall comply with all Federal Statutes including, but not limited to, those relating to nondiscrimination, employment, 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 and State laws or regulation. If a conflict is determined to occur, applicable Federal and State laws 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. 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. This MOU may be amended as necessary by mutual consent of both parties upon issuance of written notification of such modification, signed and dated by all parties.

F. Notices. All written notices concerning this MOU shall be delivered in person or sent by certified mail, return receipt requested, to the Parties as follows:

1. For the Commission:

   Duane Shroufe, Director
   5000 W Carefree Highway
   Phoenix, Arizona 85086

2. For Arizona Department of Transportation:

   Todd Williams, OES Director
   206 S. 17th Avenue
   Mail Drop 102A
   Phoenix, Arizona 85007

G. Integration. This MOU constitutes the entire agreement between the Parties pertaining to the subject matter herein and accurately sets forth the rights, duties, and obligations of each Party. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions of this MOU may be abrogated, modified, rescinded, or amended in whole or in party only by mutual written consent executed by the Parties.

H. Severability. In the event that any provision of this MOU or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this MOU and shall have no effect on the remaining provisions of this MOU, which shall remain in full force and effect.

VIII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this MOU by the Director, Arizona Game and Fish Department, and the Director of the Office of Environmental Services, Arizona Department of Transportation, as of the date shown.

ARIZONA GAME AND FISH DEPARTMENT

BY: Duane L. Shroufe 2/21/08

Duane L. Shroufe
Director

Date

ARIZONA DEPARTMENT OF TRANSPORTATION

BY: Sam Elters 2/28/08

Sam Elters
State Engineer

Date