

When recorded return to:
Pinal County Board of Supervisors
Clerk of the Board
P.O. Box 827
Florence, Arizona 85132

RESOLUTION NO. _____

RESOLUTION OF THE PINAL COUNTY BOARD OF SUPERVISORS ACCEPTING FROM THE DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, A RIGHT-OF-WAY GRANT/ TEMPORARY USE PERMIT, AZA-35391, A FOR VEHICULAR BRIDGE (Kelvin Bridge Replacement) WITH AMENDED STIPULATIONS, AS DESCRIBED HEREIN.

WHEREAS, it is in the best interest of Pinal County to accept the RIGHT-OF-WAY/TEMPORARY USE PERMIT, AZA-35391 with amended stipulations, being granted from the DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, dated the 12th day of September, 2016, which is described and attached hereto and made a part hereof.

THEREFORE, BE IT RESOLVED: The Pinal County Board of Supervisors hereby approves and accepts the RIGHT-OF-WAY/TEMPORARY USE PERMIT, AZA-35391 with amended stipulations, granted from the DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT, which is described and attached hereto and made a part hereof.

BE IT FURTHER RESOLVED: The Chairman of the Pinal County Board of Supervisors is authorized to execute this Resolution and any document necessary to affect the acceptance of the hereinabove described easement.

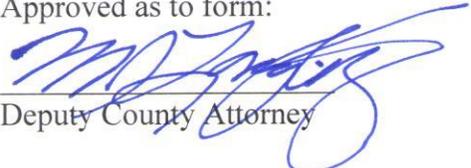
PASSED AND ADOPTED this _____ day of _____ 2016, by the PINAL COUNTY BOARD OF SUPERVISORS.

Chair of the Board

ATTEST:

Clerk of the Board

Approved as to form:



Deputy County Attorney

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office
BLM - Tucson Field Office

Serial Number
AZA-035391

1. A (right-of-way) (permit) is hereby granted pursuant to:

- a. Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b. Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. Other (describe) _____

2. Nature of Interest:

- a. By this instrument, the holder Pinal County, Department of Public Works, P O Box 727, Florence, Arizona 85232 receives a right to construct, operate, maintain, and terminate a a vehicular bridge (Kelvin Bridge Replacement) (Amendment) on public lands (or Federal land for MLA Rights-of-Way) described as follows:

Gila & Salt River Meridian
T. 4 S., R. 13 E.,
Section 12, Lot 2, S½NW¼ excluding Mineral Survey 3136

Amendment to Bridge will include the following:

- **Modify proposed action to permit construction activities during the breeding season of various species. The modification is being requested in order to minimize construction impacts to vegetation by avoiding the need to clear vegetation more than once.**
- **Modifying the bridge pier locations to avoid all impacts to waters of the U.S. (the Gila River)**
- **Reducing the height of the proposed bridge by 2 feet across the span of the bridge.**
- **Changing the bridge support pier system design from three dual-column piers system to seven single-column piers system.**

- b. The right-of-way or permit area granted herein is varies feet wide, 2100 feet long and contains 5.4 acres, more or less. If a site type facility, the facility contains _____ acres.
- c. This instrument shall terminate on is perpetual, _____ years from its effective date unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.
- d. This instrument may may not be renewed. If renewed, the right-of-way or permit shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.
- e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

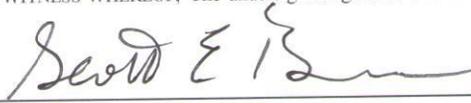
Not applicable

4. Terms and Conditions:

- a. This grant or permit is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 and 2880.
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 180 days, or otherwise disposed of as provided in paragraph (4)(d) or as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way or permit granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A & B, dated August 25, 2016, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant or permit shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

See attached Stipulations.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant or permit.


 (Signature of Holder)


 (Signature of Authorized Officer)

COUNTY ENGINEER
 (Title)

FIELD MANAGER
 (Title)

9/1/2016
 (Date)

9/12/16
 (Effective Date of Grant)

**Bureau of Land Management
Standard Stipulations
AZA-035391 Pinal County (Kelvin Bridge)
AMENDMENT**

1. Definitions

- 1.1. The Tucson Field Manager or its designee is the Authorized Officer (AO), as defined by 43 CFR 2920.0-5(c).
- 1.2. "Grantee," or "holder," means Pinal County, and any and all assignees that may be of record, including all agents, contractors, sub-contractors, and employees.
- 1.3. "Grant," means the temporary use permit, license, lease, permit, or other permission granted by the United States to the grantee for the use of public lands and resources.

2. General

- 2.1. The holder of right-of-way No. AZA-035391 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.) on the right of way, unless the release is wholly unrelated to the right of way holder's activity on the right-of-way. This agreement applies without regard to whether a release is caused by the holder, its agent, or an unrelated third party.
- 2.2. The holder shall fully indemnify, or hold harmless, the United States for any liability damage, or claims arising in connection with the holder's use and occupancy of the right-of-way.
- 2.3. Copper Basin Railway and local residents will be notified of the construction prior to the start of construction.
- 2.4. Pinal County will continue to maintain the historic Kelvin Bridge as a part of the Arizona Trail to be used as a pedestrian crossing over the Gila River in perpetuity. A letter to this effect can be found in Appendix C of the EA.
- 2.5. The holder shall comply with all State and Federal laws applicable to the authorized use and such additional state and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant.
- 2.6. All valid rights existing on the date of the original ROW grant will be recognized and complied with.
- 2.7. All mitigations and stipulations of the original grant will be adhered to.

3. Maintenance

- 3.1. The holder shall maintain the right of way in a safe, useable condition, as directed by the authorized officer and a regular maintenance program shall be maintained.
- 3.2. All construction equipment shall be maintained in good working condition in order to minimize impacts to air quality in the Proposed Action area from exhaust emissions.
- 3.3. All vehicle movement would be restricted to designated access, contracted acquired access or public roads.

- 3.4. Fugitive dust emissions shall be minimized in the Proposed Action area during construction by regular water application.
 - 3.5. The holder shall survey and mark the north boundary of the right-of-way with a stake and lath at intervals no greater than 100 feet. The tops of the stakes and laths will be painted and the laths flagged in a distinctive color as determined by the holder. The holder shall maintain all boundary stakes and laths in place until directed otherwise in writing by the authorized officer.
 - 3.6. Pinal County will continue to maintain the historic Kelvin Bridge as a part of the Arizona Trail to be used as a pedestrian crossing over the Gila River in perpetuity. A letter to this effect can be found in Appendix C of the EA.
 - 3.7. During bridge construction, a netting device (or something similar as designed by the contractor and approved by the engineer) will be installed in order to keep any materials from falling into the Gila River.
 - 3.8. Heavy equipment will not be used in the flow channel or abutting wetlands.
- 4. Environmental**
- 4.1. A Spill Prevention Control and Countermeasures (SPCC) plan addressing the storage, handling, and release of fuels and lubricants on-site shall be followed during construction. The SPCC plan shall be in accordance with all Federal and state laws regarding the use of fuels and lubricants.
 - 4.2. A Waste Management Plan (WMP) addressing the safe handling, storage, transportation, and disposal of solid waste, hazardous materials, or other waste used in the Proposed Action area shall be followed during construction. The WMP shall be in accordance with all applicable Federal and state laws regarding waste materials.
 - 4.3. All solid waste, such as residential-type garbage, shall be removed from the Proposed Action area on a daily basis.
 - 4.4. Pinal County and/or their contractor shall be held responsible if noxious weeds become established within the project area. Weed control shall be required in areas where noxious weeds exist, which include the floodplain of the Gila River, roadsides, and adjacent areas affected by the establishment of weeds due to the Proposed Action. The operator shall consult with the Authorized Officer for acceptable weed control methods, which include following EPA and BLM requirements and policies.
 - 4.5. If suspected hazardous materials are encountered during construction or a spill occurs due to an unforeseen circumstance such as an equipment malfunction, Pinal County and/or their contractor will notify the BLM. In the event of a hazardous materials spill, Pinal County and/or their contractor will take appropriate measures to remove the contaminated soil and properly dispose of the contaminated soil at a certified hazardous materials disposal facility.
 - 4.6. To prevent motorized access on Arizona National Scenic Trail, large boulders will be placed at the entrance of the trailheads within the project area.
 - 4.7. A qualified biological monitor will be on site monitoring construction activities over and within the wetted channel. A biological report will be sent to BLM on a weekly basis. The monitor shall report and note compliance to the BLM within 24 hours.

5. Cultural

- 5.1. Prior to construction, all construction personnel would be instructed on the protection of cultural and ecological resources.
- 5.2. An archaeological monitor shall be present during any ground disturbing project activities which may occur inside archaeological site AZ V:13:33 (ASM).
- 5.3. If previously unidentified cultural resources are identified during construction of the new bridge, work will cease at that location, and the ADOT District Environmental Coordinator will be notified. The applicant will arrange for proper treatment of these resources. A treatment plan shall be approved by the Arizona SHPO if the discovery is on non-BLM land; and by the Arizona SHPO and BLM if the discovery is on BLM land.
- 5.4. An additional cultural and paleontological resource survey may be required in the event the project location is changed or additional surface disturbing operations are added to the project after the initial survey. Any such survey would have to be completed prior to commencement of operations.
- 5.5. If, in connection with operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; Stat. 3048; 25 U.S.C. 3001) are discovered by the holder, or any person working on his behalf, on public or Federal lands, shall be immediately reported to the Authorized Officer (AO). The holder shall continue to protect the immediate area of the discovery until notified by the AO that operations may resume.
- 5.6. With regard to portions of the current project area that cross lands administered by Pinal County, the client and all subcontractors are reminded that, in accordance with §41-844 of the Arizona Revised Statutes, the person supervising any survey, excavation, construction, or like activity on lands administered by the State of Arizona or any of its administrative subdivisions (i.e., counties or municipalities) is required, upon incidentally encountering cultural deposits more than 50 years old, to halt all work on the undertaking and immediately notify the Director of the Arizona State Museum (ASM) of the finding, so that a consultation process can be initiated and an appropriate course of treatment decided upon. Work in the area is not to resume until authorization is received from the Director.
- 5.7. With regard to portions of the project area that lie on privately owned land, the client and all subcontractors are reminded that, in accordance with §41-865 of the Arizona Revised Statutes, should buried human remains or funerary goods be encountered incidentally on private lands during any ground-disturbing activities associated with the current project or any follow-up work done at any time in the future, all such work must immediately be halted in the vicinity of the finding and the Director of the ASM must immediately be informed, so that a consultation process can be initiated and an appropriate course of treatment decided upon. Under the statute, the Director must make an initial response to such a notification within 10 working days; there is, however, no specified limit on the length of time that work may be delayed in order to deal with the finding in an appropriate manner. In any case, work is not to resume until authorization is received from the Director of the ASM. Should the Director fail to respond to the notification within the ten-day window provided in the statute, it can be assumed that authorization to resume work has been given.

- 5.8. Project plans shall be submitted to SHPO for review and comment and will comply with the Secretary of Interior's Standards for the Treatment of Historic Properties in order to ensure no adverse impacts occur to the visual context of the existing Kelvin Bridge.

6. Hazardous Materials/Pesticides/Liability

- 6.1. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et.seq.) with regard to any toxic substances that are used, generated by or stored on the temporary use permit or on facilities authorized under this temporary use permit grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the AO concurrent with the filing of the reports to the involved Federal agency or State government.
- 6.2. The holder of ROW grant number AZA-035391 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et.seq., or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et.seq.) on the temporary use permit (unless the release or threatened release is wholly unrelated to the temporary use permit holder's activity on the temporary use permit). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third party.
- 6.3. Use of pesticides or herbicides shall comply with the applicable Federal and State laws. Pesticides and herbicides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides or herbicides, the grantee shall obtain from the AO written approval of a plan showing the type and quantity of materials to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides or herbicides shall be approved in writing by the AO prior to such use.

7. Resources

- 7.1. If any species listed as threatened or endangered under the Endangered Species Act is encountered during construction activities, all work will cease and telephone notification of the discovery will immediately be made to USFWS. Construction activity may resume only after the authorized officer has issued a continuance.
- 7.2. In accordance with the Arizona Pollutant Discharge Elimination System (AZPDES), Pinal County will develop a Storm Water Pollution Prevention Plan (SWPPP) and will submit the SWPPP and a Notice of Intent (NOI) to ADEQ to obtain a General Construction Permit. The SWPPP will include BMPs that ensure construction will not adversely impact soils and/or water quality in the Proposed Action area.
- 7.3. Prior to construction, the three wetland areas within the Proposed Action area, as delineated by SWCA, and the OHWMs of the Gila River will be fenced with 1.5 m (5 foot) high chain-link

- and orange construction fencing. The enclosed wetlands are to remain undisturbed, and the disturbance within the OHWM is to only occur to the extent described above.
- 7.4. Prior to construction, orange construction fencing 1. M (5 feet) in height shall be placed 6.1 m (20 feet) beyond and parallel to the edges of the new bridge to delineate the eastern and western bridge construction access limits within SWFL critical habitat.
 - 7.5. Vegetation clearing activities would be restricted to the period October 1-March 31 of any given year. No vegetation clearing activities would occur from April 1-September 30.
 - 7.6. A Desert Tortoise survey shall be performed prior to construction to assess whether or not the Proposed Action area is utilized by this species. The standard Mitigation Measures outlined in Guidelines for Handling Sonoran Desert Tortoises Encountered on Development projects Arizona Game and Fish Department 2014 will be mandatory measures.
 - 7.7. Following construction of the Proposed Action, all disturbed riparian areas are to be revegetated, as described below in the Vegetation mitigation measures. Revegetated areas shall be monitored at least twice a year, in April and September, for a period of two years following construction to ensure that revegetation efforts are successful and that the areas restored are free of invasive species. Reclamation would be accomplished with native species which would an approved seed mix and native trees, unless otherwise approved.
 - 7.8. Prior to construction, an inventory of native plants will be performed in all areas where native vegetation will be disturbed in order to determine the location and number of plants that may be destroyed or removed. Results of the inventory will be compiled in a report for submittal to BLM for their approval prior to construction.
 - 7.9. Pinal County and/or their subcontractors shall closely monitor the Proposed Action area during construction to ensure that impacts to vegetation are minimized. Clearing of SWFL critical habitat required for construction access will be limited to no more than 6.1 m (20 feet) beyond the edge of the new bridge, as delineated by the placement of construction fencing described above. No vegetation shall be trimmed, removed, or otherwise disturbed within the OHWM of the Gila River, except as that described above in Soils and Water.
 - 7.10. All disturbed areas outside critical habitat that are not otherwise permanently stabilized will be seeded after construction is complete with species native to the Proposed Action area.
 - 7.11. All areas of temporarily disturbed SWFL critical habitat shall be restored following construction, including those areas underneath the new bridge, with native riparian plant species such as Fremont Cottonwood (*Populus fremontii*), Goodding Willow (*Salix gooddingii*), and Velvet Ash (*Fraxinus velutina*). Trees planted shall be of varying heights in order to produce a layered vegetation effect. Native understory plant species such as Seepwillow (*Baccharis glutinosa*) and Burrobrush (*Hymenoclea monogyra*) shall also be planted.

The construction contractor and qualified biologist shall closely monitor the Proposed Action area during construction to ensure that impacts to vegetation are minimized. Clearing of SWFL critical habitat required for construction access will be limited to no more than 6.1 m (20 feet) beyond the edge of the new bridge as delineated by the placement of construction fencing described above. No vegetation shall be trimmed, removed, or otherwise disturbed within the Ordinary High Water Mark (OHWM) of the Gila River.