

## Appendix B -- Programmatic Agreement

**PROGRAMMATIC AGREEMENT  
AMONG  
FEDERAL HIGHWAY ADMINISTRATION  
ARIZONA STATE HISTORIC PRESERVATION OFFICE  
ARIZONA DEPARTMENT OF TRANSPORTATION  
ARIZONA STATE LAND DEPARTMENT  
ARIZONA STATE MUSEUM  
CITY OF GOODYEAR  
MARICOPA COUNTY  
AK CHIN INDIAN COMMUNITY  
GILA RIVER INDIAN COMMUNITY  
HOPI TRIBE  
PASCUA YAQUI TRIBE  
SAN CARLOS APACHE TRIBE  
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY  
TOHONO O'ODHAM NATION  
YAVAPAI-APACHE NATION**

**REGARDING THE TREATMENT OF HISTORIC PROPERTIES ALONG THE  
ESTRELLA FREEWAY, AN EXTENSION OF THE STATE ROUTE 303 LOOP,  
EXTENDING FROM VAN BUREN STREET SOUTH OF INTERSTATE 10,  
SOUTH TO MARICOPA COUNTY ROUTE 85 AND THE FUTURE STATE  
ROUTE 30 IN GOODYEAR, MARICOPA COUNTY, ARIZONA,  
STP-303-A(ASO)  
303 MA 100 H6870 01L**

**WHEREAS**, the Federal Highway Administration (FHWA) and the Arizona Department of Transportation are proposing to extend the existing State Route (SR) 303 Loop (SR 303L) west of Phoenix, to be located between Van Buren Street south of Interstate 10 (I-10) and Maricopa County Route 85 (MC 85) and the future proposed SR 30 in the City of Goodyear (Goodyear) as well as unincorporated portions of Maricopa County, a federally-funded project in Maricopa County, Arizona (hereafter referred to as “the Project”); and

**WHEREAS**, the area of potential effects (APE) for this project is defined as new rights-of-way (ROW) and temporary construction easements (TCEs) along whichever alternative alignment is selected for construction along with the area within ¼-mile of the outer boundary of that alignment where historic properties could be affected by visual, auditory, or atmospheric intrusions; and

**WHEREAS**, construction would occur on privately owned lands to be purchased by ADOT, municipal property owned by Goodyear, and county property to be acquired by ADOT from Maricopa County, and easement to be acquired by ADOT from the Arizona State Land Department (ASLD); and

**WHEREAS**, the proposed Project may have an effect upon historic properties, which are defined as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places (NHPA), including artifacts, records, and material remains related to such a property or resource” (National Historic Preservation act [NHPA] 16 U.S.C. 470w, Title III, Section 301 [5]); and

**WHEREAS**, the proposed Project may have an effect upon as yet unidentified subsurface archaeological resources; and

**WHEREAS**, the proposed Project may have an effect on yet to be assessed historic buildings, structures, or districts; and

**WHEREAS**, the proposed project may have an effect upon as yet unidentified traditional cultural properties (TCPs), which are defined as places that are “eligible for inclusion in the National Register because of [their] association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community” (National Park Service National Register Bulletin 38: *Guidelines for Evaluating and Documenting Traditional Properties*); and

**WHEREAS**, in their role as lead federal agency, FHWA has consulted with the Arizona Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the NHPA (16 U.S.C. 470f) as revised in 2004; and

**WHEREAS**, SHPO is authorized to enter into this programmatic agreement (PA) in order to fulfill its role of advising and assisting Federal agencies in carrying out their Section 106 responsibilities under the following federal statutes: Sections 101 and 106 of the NHPA of 1996, as amended, 16 U.S.C. 470f, and pursuant to 36 CFR Part 800, regulations implementing Section 106, at 800.2(c)(1)(i) and 800.6(b); and

**WHEREAS**, SHPO is authorized to advise and assist federal and state agencies in carrying out their historic preservation responsibilities and cooperate with these agencies under A.R.S. 41-511.04(D)(4); and

**WHEREAS**, ADOT and ASLD are required to consider effects on historic properties and human remains or funerary objects pursuant to the Arizona Historic Preservation Act of 1982 as amended through 2000 (ARS 41-861 through 41-865; and

**WHEREAS**, ADOT, acting as agent for FHWA, has participated in consultation and has been invited to be a signatory to this PA; and

**WHEREAS**, FHWA has consulted with the SHPO, ASLD, the Arizona State Museum (ASM), Goodyear, and Maricopa County; and

**WHEREAS**, the Native American groups that may attach religious or cultural importance to affected properties have been consulted [pursuant to 36 CFR 800.2 ©(2)(ii)(A-f)], and the Ak Chin Indian Community, the Hopi Tribe, the Pascua-Yaqui Tribe, the San Carlos Apache Tribe (SCAT), the Salt River Pima-Maricopa Indian Community (SRPMIC), the Tohono O’odham Nation (TON), and the Yavapai-Apache Nation (YAN) have been invited to be concurring parties to this Agreement; and

**WHEREAS**, the Advisory Council on Historic Preservation (ACHP) was invited to be a signatory to this PA but declined participation; and

**WHEREAS**, by their signature all parties agree that the regulations specified in the ADOT document, “ADOT Standard Specifications for Road and Bridge Construction” (Section 104.12, 2000) will account for the cultural resources in potential materials sources used in Project construction; and

**WHEREAS**, an agreement regarding the treatment and disposition of human remains, associated funerary objects, and objects of cultural patrimony will be developed by the Arizona State Museum (ASM) for state, county, municipal, and private land; and

**WHEREAS**, testing and data recovery necessitated by the Project, located on state, county, municipal, and private land must be permitted by the Arizona State Museum pursuant to A.R.S. 41-842; and

**NOW, THEREFORE**, all parties agree that upon FHWA’s decisions to proceed with the Project, FHWA shall ensure that the following stipulations are implemented in order to take into account the effects of the Project on historic properties, and that these stipulations shall govern the Project and all of its parts until this Agreement expires or is terminated.

### **Stipulations**

FHWA will ensure that the following measures are carried out.

#### **1. Construction Plans and Documents Submittal**

Upon receipt by ADOT, notice will be given to the consulting parties that copies of the plans and related documents pertaining to this undertaking including the 30%, 60% and 95% draft construction documents, and the design concept reports are available for inspection; copies will be provided to those consulting parties that request them for review and comment. The consulting parties will have 10 calendar days from receipt of ADOT notice to indicate they wish to receive copies of construction documents and 30 calendar days from receipt of construction documents to review the documents and respond.

## 2. Identification of the APE and Additional Inventory Surveys

ADOT, on behalf of FHWA, and in consultation with all parties to this PA, shall ensure that the APE as defined above is refined as the alternative selection process proceeds and as construction plans are further developed. ADOT, on behalf of FHWA, shall also ensure that previously identified cultural resources are assessed for NRHP eligibility in accordance with 36 CFR 800.4, as appropriate, and that new inventory surveys of the Project APE include identification of all cultural resources and result in determinations of NRHP eligibility in accordance with 36 CFR 800.4. Should any party to this Agreement disagree with FHWA and ADOT regarding eligibility, the SHPO shall be consulted and resolution sought within 30 calendar days. If FHWA and SHPO disagree on eligibility, FHWA shall request a formal determination from the Keeper of the National Register.

## 3. Identification, Evaluation, Documentation, and Mitigation of Impacts to Traditional Cultural Properties

FHWA in consultation with all parties to this PA, shall ensure that consultation with the Native American groups that may attach religious or cultural importance to affected properties will continue in order to identify, evaluate, document, and mitigate possible impacts to TCPs according to National Park Service National Register Bulletin #38: *Guidelines for Evaluating and Documenting Traditional Properties*.

## 4. Geotechnical Investigations

Because geotechnical investigations may effect historic properties within the APE, ADOT on behalf of FHWA, will ensure that historic properties be avoided by geotechnical investigations wherever possible. Geotechnical investigations beyond the boundaries of historic properties may proceed without consultation. In the event that historic properties cannot be avoided, ADOT, in consultation with the consulting parties, shall determine appropriate treatment. Data recovery at geotechnical investigation locations requires a Treatment Plan, as described below, be developed. Monitoring at geotechnical locations within historic properties is to be conducted in accordance with the Project-wide Monitoring and Discovery Plan described below. Geotechnical investigations outside the boundaries of historic properties may proceed prior to the completion of any data recovery required at other locations.

## 5. Development of Treatment Plans

If mitigation measures are required to ensure that historic properties are treated in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, a treatment Plan will be developed and submitted by ADOT, on behalf of FHWA, to all parties to this PA for 30 calendar days' review. For treatment of archaeological sites, the Plan will be consistent with the *Secretary of*

*the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-37). Unless any signatory or concurring party objects to the Plan within 30 calendar days after receipt of the Plan, ADOT, on behalf of FHWA, shall ensure that it is implemented prior to construction.

6. Archaeological Treatment Plans will specify:
  - a) The properties or portions of properties where archaeological testing or data recovery is to be carried out. Also, it will specify any property or portion of a property that would be destroyed or altered without treatment;
  - b) The results of previous research relevant to the property, and the treatment objectives, with an explanation of their relevance and importance;
  - c) The field and laboratory analysis methods to be used (as appropriate), with an explanation of their relevance to the research objectives;
  - d) The methods to be used in analysis, data management, and dissemination of data to the professional community and the public, including a proposed schedule for project tasks, and for the submission of draft and final reports or other documentation (as appropriate) to consulting parties;
  - e) The proposed disposition and curation of recovered materials and records in accordance with ARS 41-844;
  - f) A protocol for the treatment of human remains, in the event that such remains are discovered, describing methods and procedures for the recovery, inventory, treatment, and disposition of human remains, funerary objects, and objects of cultural patrimony. This protocol will reflect concerns and/or conditions identified as a result of consultations among parties to this PA and will be in accordance with the burial agreement developed by ASM for state, county, municipal, and private lands.
  
7. Non-archaeological Treatment Plans will specify:
  - a) The properties or portions of properties for which treatment (for example, photographic and archival documentation) is to be carried out. Also, it will specify any property or portion of a property that would be destroyed or altered without treatment;
  - b) The results of previous research relevant to the property, and the treatment objectives, with an explanation of their relevance and importance;

- c) The field and archival methods (for example, Historic American Buildings Survey [HABS] or Historic American Engineering Record [HAER] documentation) to be used (as appropriate), with an explanation of their relevance to the treatment objectives;
  - d) The methods to be used in analysis, data management, and dissemination of data to the professional community and the public, including a proposed schedule for project tasks and for the submission of draft and final reports or other documentation (as appropriate) to consulting parties;
  - c) The proposed place where documentation will be archived/filed (for example, Library of Congress, Arizona State Library and Archives, State Historic Preservation Office).
8. Development of a Monitoring and Discovery Plan

ADOT, on behalf of FHWA, will ensure that a Project-wide Monitoring and Discovery Plan is developed. The Plan will specify the procedures for monitoring, evaluating, and treating discoveries of unexpected or newly identified properties during planning or construction of the Project, including consultation with other parties; Unless any signatory or concurring party objects to the Plan within 30 calendar days after receipt of the Plan, ADOT, on behalf of FHWA, shall ensure that it is implemented prior to construction.

9. Review and comment on Treatment Plans and Monitoring and Discovery Plans
- (a) Upon receipt of a draft Plan, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the subject Plan.
  - (b) If revisions to the subject Plan are made all consulting parties will have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the subject Plan.
  - (c) Once the subject Plan is determined adequate by all parties (with SHPO concurrence), ADOT, on behalf of FHWA, shall issue authorization to proceed with the implementation of the subject Plan plan, subject to obtaining any and all necessary permits.
  - (d) Final versions of the subject Plan will be provided to all consulting parties.

## 10. Review and Comment on Preliminary Report of Findings

- a) Following completion of fieldwork related to archaeological testing, data recovery, or other treatment, the institution, firm, or consultant responsible for the work will prepare and submit a brief (generally no more than 5-10 pages including illustrations) Preliminary Report of Findings.
- b) Following receipt of a draft of the Preliminary Report of Findings, ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the Report.
- c) If revisions to the Preliminary Report of Findings are made, all consulting parties have 10 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the Report.
- d) Once the Preliminary Report of Findings has been accepted as a final document, ADOT, on behalf of FHWA, will notify appropriate Project participants that construction may proceed.
- e) Final versions of the Preliminary Report of Findings will be provided to all consulting parties.

## 11. Review and Comment on Treatment Reports

- a) (a) Following completion of any mitigative treatment, a Report will be prepared incorporating all appropriate data analyses and interpretations. ADOT, on behalf of FHWA, will review and subsequently submit such documents concurrently to all consulting parties for review and comment. All consulting parties will have 30 calendar days from receipt to review and provide comments to ADOT. All comments shall be in writing with copies provided to the other consulting parties. Lack of response within this review period will be taken as concurrence with the Report.
- b) If revisions to the Report are made, all consulting parties will have 20 calendar days from receipt to review the revisions and provide comments to ADOT. Lack of response within this review period will be taken as concurrence with the Report.

## 12. Standards for Survey, Testing, Data Recovery, Monitoring, or Other Treatment

All historic preservation work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-44739).

## 13. Curation

All materials and records resulting from archaeological testing, data recovery, or monitoring programs conducted within the APE, except as noted below, shall be curated in accordance with standards outlined in ARS 41-844, ARS 41-865, and guidelines generated by ASM. The repository for materials either will be ASM or one in Maricopa County that meets those standards and guidelines. All materials subject to repatriation under ARS 41-844 and ARS 41-865 shall be maintained in accordance with the ASM burial agreement until any specified analyses, as determined following consultation with the appropriate Native American groups and individuals, are complete and the materials are repatriated or submitted to ASM.

## 14. Objection by a Signatory or Concurring Party

Should any signatory or concurring party to this PA object within 30 days to any Plan or Report provided for review or to any aspect of this undertaking related to historic preservation issues, FHWA shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, FHWA shall request further comments of the ACHP with reference only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this PA that are not the subject of the dispute will remain unchanged.

## 15. Discoveries

If previously unknown cultural resources are discovered after construction begins, the person in charge of the construction shall promptly report the discovery to the ADOT Historic Preservation Team or specialist representing FHWA. ADOT, on behalf of FHWA, will follow the provisions outlined in the Monitoring and Discovery Plan. If human or funerary objects are discovered, ADOT shall require construction to immediately cease within the area of the discovery, take steps to secure the discovery, and notify and consult with appropriate Native American groups to determine treatment and disposition measures in accordance with the previously implemented ASM burial agreement. The Director of the ASM (the Director) shall also be informed. In consultation with the Director and ADOT, on behalf of FHWA, the person in charge of construction shall immediately take steps to secure and maintain preservation of the discovery. If the discovery appears to involve human remains as defined in ASM rules implementing ARS



41-844 and 41-865, ASM and ADOT, on behalf of FHWA, shall ensure that the discovery is treated according to the ASM burial agreement.

If human remains are not involved, then the ADOT Historic Preservation Specialist shall evaluate the discovery, and in consultation with FHWA and SHPO, determine if the Monitoring and Discovery Plan previously approved by ASM is appropriate to the nature of the discovery. If appropriate, the Monitoring and Discovery Plan shall be implemented by ADOT, on behalf of FHWA. If the Monitoring and Discovery Plan is not appropriate to the discovery, FHWA shall ensure that an Alternate Plan for the resolution of adverse effect is developed pursuant to 36 CFR 800.6 and circulated to the consulting parties, who will have 48-hours to review and comment upon the Alternate Plan. FHWA shall consider the resulting comments, and shall implement the Alternate Plan once necessary permits have been issued.

#### 16. Amendments

This PA may be amended by the signatories pursuant to 36 CFR 800.6 (c) (7). FHWA shall file any amendments with the ACHP and provide notice to the concurring parties.

#### 17. Termination

Any signatory may terminate the PA by providing 30 day written notification to the other signatories. During this 30-day period, the signatories may consult to seek agreement on amendments or other actions that would avoid termination pursuant to 36 CFR 800.6 (b). If the parties cannot agree on actions to resolve disagreements, FHWA will comply with 36 CFR 800.7(a).

#### 18. In the event that FHWA or ADOT cannot carry out the terms of this PA, FHWA will comply with 36 CFR 800.3 through 800.6.

This PA shall be null and void if its terms are not carried out within twenty-five (25) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms. Execution of this PA by the signatories and its subsequent filing with the ACHP is evidence that the Federal Highway Administration has afforded the Advisory Council on Historic Preservation an opportunity to comment on the Project and its effects on historic properties, and that the Federal Highway Administration has taken into account the effects of the undertaking on historic properties.

**SIGNATORIES**

**FEDERAL HIGHWAY ADMINISTRATION**

By Rei yd

Date 6-6-13

Title Environmental Coordinator

**ARIZONA STATE HISTORIC PRESERVATION OFFICER**

By James Garrison

Date 6/18/13

Title AZSHPO

**INVITED SIGNATORIES**

**ARIZONA DEPARTMENT OF TRANSPORTATION**

By Paul Brown, Manager

Date 6/5/13

Title Environmental Planning Group

**CONCURRING PARTIES**

**ARIZONA STATE LAND DEPARTMENT**

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**ARIZONA STATE MUSEUM**

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**CITY OF GOODYEAR**

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**SIGNATORIES**

FEDERAL HIGHWAY ADMINISTRATION

By Paul Yeh

Date 6-6-13

Title Environmental Coordinator

ARIZONA STATE HISTORIC PRESERVATION OFFICER

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**INVITED SIGNATORIES**

ARIZONA DEPARTMENT OF TRANSPORTATION

By Paul C. Brown, Manager

Date 6/5/13

Title Environmental Planning Group

**CONCURRING PARTIES**

ARIZONA STATE LAND DEPARTMENT

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

ARIZONA STATE MUSEUM

By Patricia J. ...

Date 11 July 13

Title Director

CITY OF GOODYEAR

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

MARICOPA COUNTY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

AK-CHIN INDIAN COMMUNITY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

GILA RIVER INDIAN COMMUNITY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

HOPI TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

PASCUA YAQUI TRIBE

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

SAN CARLOS APACHE TRIBE

By Terry Rambl

Date 6/28/13

Title Chairman

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

TOHONO O'ODHAM NATION

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

YAVAPAI-APACHE NATION

By \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_