

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
PIMA ASSOCIATION OF GOVERNMENTS  
AND  
THE TOWN OF ORO VALLEY  
FOR  
PROGRAMMING AND FUNDING OF  
LA CANADA / MOORE INTERSECTION STUDY (TIP ID 19.15)**

This Memorandum of Understanding (MOU) is entered into by and between Pima Association of Governments (PAG), the designated Metropolitan Planning Organization (MPO) for Pima County, and The Town of Oro Valley, a body politic and corporate of the State of Arizona (“the Lead Agency”).

**RECITALS**

- A. 23 U.S.C 134 (b) establishes Metropolitan Planning Organizations in urban areas over 50,000 in population. Additionally, urbanized areas over 200,000 in population are considered Transportation Management Areas (TMA) that require the MPO to incorporate additional requirements into the planning process as outlined in 23 USC 134 (k).
- B. The governing board of the MPO is composed of representatives of each member of the regional jurisdictional governments in accordance with 23 USC 134 (d).
- C. PAG as the MPO is required to annually develop a Transportation Improvement Program (TIP) in accordance with 23 USC 134 (j).
- D. PAG, as part of the regional planning process throughout 23 USC 134 is required to ensure projects identified in the TIP are making satisfactory progress toward completion, have the necessary funding commitments to be completed within the timeframe published in the TIP and that completed projects are reported on using a performance based planning process.
- E. Publication of the PAG TIP document authorizes the obligation of federal funding (expenditure of federal funds obligated for this Project on or after May 29, 2015 is subject to the terms and conditions of this MOU) and/or authorizes the drawdown of state PAG HURF 12.6% funds to projects that are programmed in the “current” fiscal year of the document.
- F. The Town of Oro Valley has been identified as the Lead Agency for the La Canada / Moore Intersection Study and will be responsible for all aspects of Project implementation including, but not limited to, planning, Project management, risk management, design, right of way acquisition, construction, advertisement, award, execution and administration of the design and construction contracts for the Project.

- G. The Lead Agency is authorized by ARS Section 9-276 to design, maintain, control and manage public roads within the Lead Agency’s jurisdictional boundaries.
- H. The Lead Agency is authorized under A.R.S. § 28-6701 to establish, construct, and maintain highways and related improvements in Pima County within municipal boundaries. The Lead Agency may, when authorized by law, have a legal contract with one or more jurisdictions to perform roadway and other improvements within the boundaries of the other jurisdiction or jurisdictions.
- I. The Lead Agency and PAG wish to cooperate in the programming and funding for the La Canada / Moore Intersection Study (“the Project”). This Project is identified in the PAG TIP with the TIP ID# of 19.15
- J. It is the policy of PAG to require that the Lead Agency be identified and a Memorandum of Understanding (MOU) be approved and entered into by PAG and the Lead Agency before the Project can advance into the first or second year of the TIP document.
- K. The PAG TIP Policies and Procedures document will apply to the programming process for this Project unless otherwise specified herein.
- L. This Project has been identified to add value to the stated goals and objectives of the adopted regional transportation plan, as such it must meet and comply with its obligations to the region.

NOW, THEREFORE, the Town of Oro Valley and PAG, pursuant to the above and in consideration of the matters and things set forth herein, do mutually understand as follows:

**UNDERSTANDING**

**1. Purpose.** The purpose of this MOU is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address various legal and administrative matters among the parties.

**2. Project.** The project consists of performing a safety study to evaluate the existing traffic conditions at the intersection of La Canada Drive and Moore Road and identify problems and present solutions respectively, as more fully depicted in the attached Exhibit A, including the following:

- a) Detailed Project scope and schedule, including a description of how the Project will benefit the PAG region.
- b) PAG TIP ID# Number
- c) Project budget and cost breakdown by phase
- d) Total amount of regional funding programmed for the Project plus a breakdown of any other funding available to complete the project.
- e) Designation of Project phases, if applicable, and any additional related agreements.
- f) Estimated construction start date and duration of construction.
- g) Projected timeline.
- h) Identification of a Project contact for the Lead Agency

- i) For non-programmatic projects, the scope should list (at a minimum) all Project features and categories that will be identified in the project's base info page in the TIP database. The jurisdictions are encouraged to list additional Project features as well.
- j) For programmatic expenditures, the scope should include anticipated deliverables and outcomes, such as number of meetings or outreach events, or number of participants reached.

**2. Operations and Maintenance.** The Lead Agency will identify the cost and funding source for operations and maintenance of the completed project.

**3. Effective Date; Term.** This MOU shall become effective upon approval of this MOU by the PAG Regional Council and the Lead Agency and shall continue in effect until all improvements constructed pursuant to this MOU are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Project have expired.

**4. Responsibilities of the Lead Agency.**

- a. The Lead Agency shall be responsible for the implementation of the Project in accordance with this MOU and all applicable public roadway, traffic signal, and street lighting design and construction standards. Design Standards are federal, state, county or municipal standards for engineering, traffic, safety or public works facilities design. Examples of Design Standards include the American Association of State Highway and Transportation Officials and Federal Highway Administration standards for highway engineering and construction, the Pima Association of Governments Standard Specifications for Public Improvements, the Pima County Roadway Design Manual, the Pima County Department of Transportation /City of Tucson Department of Transportation Pavement Marking Design Manual, and Pima County and municipal design guidelines for roadway lane widths and level of drainage protection.
- b. If any parties other than the Lead Agency are contracted to perform any portion of the Project, the Lead Agency shall be responsible for the contracts for design, construction, or any other professional services for the Project and shall select the consultants and contractors to be used on the Project. The Lead Agency shall follow all local, regional, state or federal requirements applicable to the funding being used, including selection and contracting for services.
- c. The Lead Agency shall be responsible for all traffic management, including public notification, during Project implementation when required.
- d. For construction projects, the Lead Agency shall operate and maintain the improvements during and after completion of construction except where those responsibilities have been agreed to by another agency or jurisdiction.
- e. The final cost of the Project shall be that amount necessary to complete the Project including any work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the regional funds identified in the TIP document.

- f. The Lead Agency shall exercise its power of eminent domain, if necessary, to acquire property needed for the Project.
- g. Under no circumstances shall the contractor(s) or any other third party entity own or imply ownership of products and services provided and paid for in part or in whole with funds identified in this MOU.
- h. The Lead Agency will be responsible for assuming all risks associated with the Project except those that are assigned to another agency or jurisdiction that has agreed to that assumption.
- i. The Lead Agency shall require its contractors performing any portion of the Project to name PAG as additional insured and additional indemnitee with respect to insurance policies for general liability, automobile liability and defects in design in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name PAG, as well as any other funding agency involved with the Project (RTA, ADOT, FHWA, etc.) as an additional beneficiary in any performance and payment related assurances posted for the Project.
- j. Monthly, the Lead Agency shall be responsible for preparing and submitting the reimbursement requests (invoices) to PAG/ADOT or FHWA depending on the fund source.
- k. The Lead Agency shall be responsible for submitting a status report describing its progress and adherence to the Project scope, schedule and budget to the TIP Subcommittee upon request, and quarterly to PAG.
- l. The Lead Agency shall indemnify, defend, and hold PAG and any other funding providers harmless from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against PAG and any other funding providers, and any of their officers, directors and employees, or any person, regardless of who makes the claim, to the extent they result from the negligent or wrongful acts of the Lead Agency or its contractors, or any of their employees, agents, representatives, or sub-contractors, in connection with or incidental to the performance of this MOU. The indemnity provided in this section shall survive termination of this MOU.
- m. The Lead Agency and its contractors shall clearly identify the funding source(s) for the project, as well as any funding agency involved with the Project (PAG, RTA, FTA, FHWA, etc.) in all documents and communications materials related to the Project. Communications materials may include, but are not limited to, signs, brochures, press releases, PowerPoint presentations, website information, reports, agenda templates, DVD presentations, and any electronic documents.

## **5. Responsibilities of PAG.**

- a. PAG will annually publish a TIP document making regional projects eligible for state and federal funding.

- b. PAG will aid the Lead Agency in preparation of any TIP amendments that may be necessary for the completion of the project.
- c. PAG will aggregate regional progress toward completion of the program and will report to the region's state and federal funding partners.
- d. PAG will process drawdown requests associated with PAG HURF 12.6% funding.

**6. Amendment.**

- a. This MOU may be modified, amended, altered or changed only by written agreement signed by both parties.
- b. An amendment to this MOU is required if the scope of work for the Project is significantly altered, such as a change to the Project boundaries, a significant alteration to the scope of services to be provided by the project, or addition or elimination of significant Project features.
- c. An amendment to this MOU is required if the total amount of regional funding programmed on the Project changes are more than 10% of the total programmed amount or \$200,000, whichever is smaller. Funding changes less than this threshold do not require an amendment to the MOU, as long as there are no significant changes in scope.

**6. Termination.** Either party may terminate this MOU for material breach of the MOU by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. Upon termination, programmed funds will no longer be available for use on said project. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this MOU. Any such termination shall not relieve either party from liabilities or costs already incurred under this MOU.

**7. Non-assignment.** Neither party to this MOU shall assign its rights or obligations under this MOU to any other party without written permission from the other party to this MOU.

**8. Construction of MOU.**

- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the programming of the Project in the TIP. Any exhibits to this MOU are incorporated herein by this reference.
- b. Construction and interpretation. All provisions of this MOU shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
- c. Captions and headings. The headings used in this MOU are for convenience only and are not intended to affect the meaning of any provision of this MOU.
- d. Severability. In the event that any provision of this MOU or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no

effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the MOU are severable. In the event that any provision of this MOU is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.

f. This MOU is subject to the provisions of A.R.S. § 38-511.

**9. Ownership of Improvements.** If the Project involves construction, except as otherwise provided for by law or under a contract with one or more other jurisdictions, ownership of and title to all Project improvements shall automatically vest in Lead Agency upon completion of the Project.

**10. Legal Jurisdiction.** Nothing in this MOU shall be construed as either limiting or extending the legal jurisdiction of the Lead Agency or PAG.

**11. No Joint Venture.** It is not intended by this MOU to, and nothing contained in this MOU shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Lead Agency and any PAG employees, or between PAG and any Lead Agency employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

**12. No Third Party Beneficiaries.** Nothing in the provisions of this MOU is intended to create duties or obligations to or rights in third parties not parties to this MOU or affect the legal liability of either party to the MOU by imposing any standard of care different from the standard of care imposed by law.

**13. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this MOU.

a. **Anti-Discrimination.** Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out the duties pursuant to this MOU. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of Arizona, which are incorporated into this MOU by reference as if set forth in full herein, including the provisions of A.R.S. ' 41-1463.

b. **Americans with Disabilities Act.** This MOU is subject to all applicable provisions of the Americans with Disabilities 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.

**14. Waiver.** Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

**15. Force Majeure.** A party shall not be in default under this MOU if it does not fulfill any of its obligations under this MOU because it is prevented or delayed in doing so by reason of uncontrollable forces. The term “uncontrollable forces” shall mean, for the purpose of this MOU, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

**16. Notification.** All notices or demands upon any party to this MOU shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

Pima Association of Governments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Town of Oro Valley:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17. Remedies.** Either party may pursue any remedies provided by law for the breach of this MOU. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this MOU.

**18. Counterparts.** This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

**In Witness Whereof**, the Town of Oro Valley has caused this MOU to be executed by the \_\_\_\_\_, upon resolution of the \_\_\_\_\_ attested to by the \_\_\_\_\_, and PAG has caused this MOU to be executed by its Chair of the Regional Council.

**PIMA ASSOCIATION OF GOVERNMENTS**

\_\_\_\_\_  
Duane Blumberg, Regional Council Chair

\_\_\_\_\_  
Date

**TOWN OF ORO VALLEY**

\_\_\_\_\_  
Dr. Satish I. Hiremath, Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Julie Bower, Town Clerk

\_\_\_\_\_  
Date

The foregoing MOU between the Town of Oro Valley and PAG has been approved as to content and is hereby recommended by the undersigned.

\_\_\_\_\_  
Mr. Farhad Moghimi, Executive Director

\_\_\_\_\_  
Town of Oro Valley

## PAG TIP Memorandum of Understanding: Exhibit A

### Base Information

Project Name	La Cañada Drive / Moore Road Intersection Safety Study		
TIP ID			
Project Location	La Cañada Drive / Moore Road Intersection		
Project Description	<p>La Cañada Drive and Moore Road intersection is 4-way stop controlled and has a high rate of non-compliance. Since January 2010 to current there have been 14 non-injury collisions and 2 injury collisions. Five of the non-injury collisions have been in 2015. Several accidents have resulted in severe property damage, but no severe injuries. The intersection has no dedicated roadway lighting.</p> <p>This study will evaluate the existing conditions at the proposed intersection and identify problems and present solutions respectively. The study will take into account the high growth rate at the vicinity of the intersection and present options for future traffic control improvements.</p>		
Lanes Before	4	Lanes After	4
Project Contact	Jose N. Rodriguez		
Project Contact	(520) 229-4872	<a href="mailto:jrodriguez@orovalleyaz.gov">jrodriguez@orovalleyaz.gov</a>	

### Estimated Project Schedule

Phase	Estimated Start Date	Estimated End Date
Study	August 2016	February 2017

### Estimated Project Budget

Phase	Regional Funding Source	Year	Amount
Study	HURF PDAF	2016	\$50,000

Phase	Other Funding Source	Year	Amount

Please list any agreements related to the project:

None
------

For Infrastructure Projects: mark all that apply

ADA Enhancements		Landscaping		Signals	X
Art		Medians		Signalized Ped Crossing	
Bike Racks		Multiuse Paths		Signing	X
Bridge		New Bike Lanes		Sound Walls	
Bus Pullouts		New Sidewalks		Street Lighting	
Culverts		Overpass		Striping	
Curbs		Pavement Preservation		Turn Lanes	
Detection Cameras	X	Pedestrian Lighting		Underpass	
Drainage Structures		Rubberized Asphalt		Utility Relocation	
Guardrails		Right of Way Purchase		Wildlife Crossing	

Additional Project Features

This project may lead to a signalized intersection.

For non-infrastructure projects: describe the outcomes and deliverables with project costs associated with each

N/A

Describe how the region as a whole will benefit from this project, including any jurisdictions that will be affected or receive benefits from the project.

La Cañada Dr. is a north-south arterial roadway that connects northern Oro Valley to the City of Tucson and is primarily 4 lane divided. Moore Rd. is a collector roadway that connects from Rancho Vistoso Blvd. to Dove Mtn. (Town of Marana and Pima County) and is primarily 4 lane divided east of La Cañada Dr.