

FS-2800-9 (7/2007)

OMB No. 0596-0081

Exp Date 04/01/2011

For Forest Service Use Only

USDA Forest Service  
CONTRACT FOR THE SALE OF  
MINERAL MATERIALS

Forest Service Unit Name **0312**

(Ref. FSM 2850)

Contract Number **MM-GILA-TBRD-TC-2011**

NOTE: This information is being collected to process your application and effect a binding contract agreement. This information will also be used to identify and communicate with applicants. Response to this request is required to obtain a benefit.

Public reporting burden for this collection of information is estimated to average 2 hours 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0596-0081), Washington, D.C. 20503.

THIS AGREEMENT, made this twenty-second day of February 2011, under authority of the Acts of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601 et seq.), March 4, 1917 (16 U.S.C. 520), and June 11, 1960 (74 Stat. 205), and the regulations set forth in 36 CFR 228, Subpart C, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Authorized Officer of the Forest Service (hereinafter called the "Authorized Officer"), and **Gila County Board of Supervisors** (hereinafter called the "Purchaser.")

WITNESSETH, That the parties hereto mutually agree as follows:

**Sec. 1. Contract area.** The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, all of the mineral materials described in Sec. 2 below, for severance, extraction, or removal, on the following described lands situated in the **Tonto National Forest**, County of **GILA**, State of **ARIZONA** as shown on the attached map marked "Exhibit B", attached hereof, **TBRD -MIN/MAT(Tonto Creek)** and made a part hereof, viz: **Sec. 11 and Sec 14 and Sec 36, T. 6 N., R. 10 E., GILA AND SALT RIVER MERIDIAN**, and containing **13** acres, more or less.

**Sec. 2. Amount and price of materials.** The total purchase price will be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

KIND OF MATERIALS	QUANTITY (Units Specified)	PRICE PER UNIT	TOTAL PRICE
SAND/GRAVEL	20,000 CUBIC YARDS	0	0
Total			\$0
Grand Total	\$0		

Determination by the Authorized Officer of the quantity of materials taken is binding on Purchaser subject to appeal only as provided in Sec. 14. All materials in the contract area in excess of the estimated quantity listed above are reserved by Government.

**Sec. 3. Payments, passage of title, and risk of loss.** Title to materials sold hereunder passes to Purchaser immediately before excavation and upon proper payment for such materials. No part of the material sold hereunder may be severed, extracted, or removed by Purchaser until payment for such materials has been made in accordance with the following:

a. Unless materials sold under this contract are paid for in full in advance, payment for materials must be made in installments of not less than \$0 each. The first installment must be paid upon approval of this contract.

b. Each additional installment is due and payable as billed by the Authorized Officer in advance of removal of the remaining material. The first installment will be retained as additional security for the full and faithful performance of this contract by Purchaser, and will be applied in whole or in part to the payment of the last installment required hereunder to make the total payment equal the total price set forth in Sec. 2, above.

The total purchase price must equal the sum of the total quantities severed, extracted, or designated therefor, multiplied by their respective unit prices. The balance due where less than a full installment remains to be paid upon the total price will be the value of material remaining to be severed or extracted. Each installment will be held in suspense until the quantity of material covered thereby has been determined. The total purchase price must be paid at least 60 days before the expiration date of the contract.

Upon termination, if the total payments made under the contract exceed the total value of the actual materials removed, the excess will be returned to Purchaser, except as noted in 36 CFR 228.66.

c. Risk of loss shall be borne by the party holding title to the mineral material at the time of loss except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.

**Sec. 4. Stipulation and reserved items.** The rights of Purchaser are subject to the regulations in 36 CFR 228, Subpart C, which are made a part of this contract, and to the stipulation, if any, which are attached hereto and made a part hereof as Exhibit A.

**Sec. 5. Bonds.**

(a) Purchaser must file with the Authorized Officer and must maintain at all times the bond required under the regulations to be furnished as a condition to the award of this contract in the amounts established by the Authorized Officer and to furnish additional bonds or security as the Authorized Officer may require.

(b) If all terms of this contract are not faithfully and fully performed by Purchaser, the bond in the sum of \$0 filed at the time of the signing of this contract will be forfeited to the amount of damages determined by the Authorized Officer. If damages exceed the amount of the bond, Purchaser hereby acknowledges liability for such excess. Upon satisfactory performance of this contract, the bonds will be canceled, or if cash or United States securities were furnished in lieu of a security bond, such cash or securities will be returned to Purchaser.

(c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, the Authorized Officer may require a new bond which is satisfactory.

**Sec. 6. Expiration of contract and extensions of time.** This contract will expire on **04/01/2011** unless an extension of time is granted in accordance with the provisions of 36 CFR 228.53(b). Written application for an extension of time may be made by Purchaser between 30 and 90 days before the expiration date of the contract.

**Sec. 7. Duties of Purchaser.** Purchaser must take fire precaution and conservation measures and must dispose of slash and other debris resulting from operations hereunder in accordance with written instructions from the Authorized Officer.

**Sec. 8. Notice of operations.** Purchaser must notify the Authorized Officer immediately of the commencement and termination of operations hereunder. A report of production will be furnished at least annually by Purchaser to the Authorized Officer.

**Sec. 9. Responsibility for damages.** Purchaser is liable in damages for the loss or destruction of all Government property for which Purchaser is directly or indirectly responsible under this contract, or resulting from Purchaser's failure to perform under this contract in accordance with the instruction of the Authorized Officer, as well as for costs incurred by Government resulting from Purchaser's breach of any of the terms hereof, or Purchaser's failure to engage in proper conservation practice. For damages resulting from willful action or gross negligence of Purchaser, Purchaser's contractors or subcontractors, or any of their employees, Purchaser is liable for triple the appraised value of damaged or destroyed materials as determined by the Authorized Officer. If the Authorized Officer determines that the damage or destruction did not result from Purchaser's willful action or gross negligence, lesser damages may be charged, but not less than the actual appraised value of the materials. Purchaser must pay the Government for such damages within 30 days after a written demand therefor by the Authorized Officer.

**Sec. 10. Violations, suspension, and cancellation.**

(a) If Purchaser violates any provision of this contract, the Authorized Officer may, after giving written notice, suspend any further operations for the Purchaser under this contract, except such operations as may be necessary to remedy any violations. The Authorized Officer may grant Purchaser an additional 30 days, after service of written notice, to correct any violations. If Purchaser fails to remedy all violations, the Authorized Officer may, by written notice, cancel this contract and take appropriate action to recover all damages suffered by the Government by reason of such violations, including application toward payment of such damages of any advance payments and bonds.

(b) If Purchaser extracts or removes any mineral materials sold under this contract during any period of suspension, or if Purchaser extracts any of such material after expiration of the time for extraction or the cancellation of this contract, such extraction or removal is in trespass and renders Purchaser liable for triple damages.

**Sec. 11. Time for removal of personal property.** Purchaser has the right within 0 months after expiration of the time for extraction and removal of mineral materials, if not in default, to remove equipment, improvements, or other personal property from Government lands or rights-of-way. Any improvements such as road surfacing, culverts, and bridges which have become a permanent part of a Government road may not be removed. Any equipment, improvements, or other personal property remaining on Government lands and rights-of-way at the end of the period for removal as set forth herein becomes the property of the Government.

**Sec. 12. Assignments.** This contract or any portion of it may not be assigned without written approval of the Authorized Officer.

**Sec. 13. Tenure.** Unless otherwise provided by this contract, Purchaser has the right to extract and remove the materials until the termination of the contract, notwithstanding any subsequent appropriation or disposition under the general land laws, including the mining and mineral leasing laws.

**Sec. 14. Appeal.** Unless specifically excluded by 36 CFR 251.80, Purchaser may appeal any decision by the Authorized Officer regarding this sale of mineral materials.

**PURCHASER**  
(Individual or Firm Name)

**THE UNITED STATES OF AMERICA**  
(Authorized Officer)

**GILA COUNTY BOARD of SUPERVISORS**  
**ATTN: PUBLIC WORKS DIVISION**  
**1400 E. Ash Street**  
**Globe, AZ 85501**

**KELLY L. JARDINE**  
District Ranger

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael A. Pastor, Chairman (Signature)  
Gila County Board of Supervisors

Date: \_\_\_\_\_ Date: \_\_\_\_\_

If this contract is executed by a corporation, it must affix its corporate seal.

**CONTRACT FOR THE  
SALE OF MINERAL MATERIALS**

**GILA COUNTY BOARD OF SUPERVISORS**

**TONTO CREEK**

**EXHIBIT A  
STIPULATIONS**

**ADMINISTRATION**

1. Unless GILA COUNTY (Purchaser) is notified in writing otherwise by the Forest Supervisor, the District Ranger is the representative of Forest Service to (a) receive notices in regard to performance under this contract, (b) take action in relation to this contract, and (c) be readily available to the area of operations.
2. GILA COUNTY will be responsible for obtaining any necessary licenses and permits, and for complying with Federal, State, and Municipal laws, codes, and regulations applicable to the performance of work.

**PROJECT DESCRIPTION**

1. The vicinity maps (Exhibit B) indicate the location of this mineral material source in relation to other communities in the region, transportation facilities, and Forest Service boundaries.
2. The goal of the project is to reduce the height of existing sandbars occurring about 100 yards above and below the Punkin Center Crossing and 100 yards below Bar-X Crossing. The sandbars will be reduced to a height not lower than the average elevation of the nearest road crossing by using two to five cubic-yard front end loaders and 10-wheel dump trucks with a ground volume weight of 58,000 pounds. The soil material will be removed and staged at the Bluebird Pit.
3. A water source will not be required. The source will render borrow material (fill dirt), which does not require washing or processing. However, for dust control purposes, a water truck may be utilized, as needed.

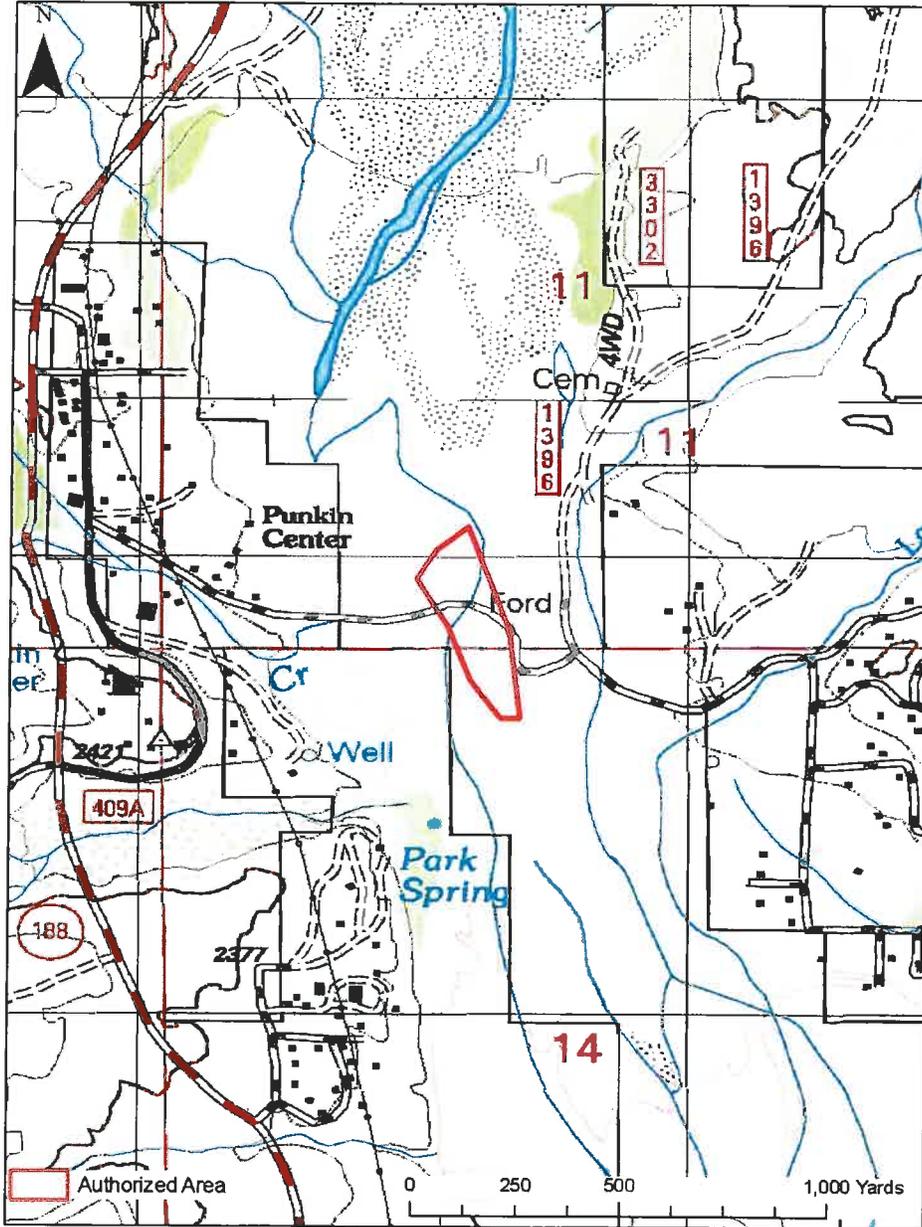
## **ENVIRONMENTAL ISSUES**

1. GILA COUNTY has met with Forest Service personnel and delineated the boundaries by flagging. GILA COUNTY personnel are aware of the boundary and will ensure excavation outside the excavation area boundary does not result.
2. Petroleum based products or other toxic materials will not be disposed of or stored on site. GILA COUNTY will take precautions to prevent the spill of petroleum products. All fuel, oil, and fluid leaks will be contained with absorbent material. Any contaminated soil or material will be disposed of in a proper waste facility. If a spill (loss of fuel, oil, or other fluid in excess of 5 gallons) occurs, GILA COUNTY will notify the Authorized Officer as soon as possible.
3. Trash will not be disposed of or stored on site. The excavation area area will be maintained to present a clean, neat and orderly appearance.
4. If previously undiscovered heritage resources (historic or prehistoric) are exposed or disturbed as a result of operations authorized under this contract the contractor shall leave such discoveries intact, cease operations in the area so affected, and immediately notify the Forest Service. The contractor shall not proceed until they are notified by the Forest Service in writing that all provisions or recovery of heritage resources are met. Contractors will ensure that these heritage resources are avoided by all activities.
5. GILA COUNTY will block off all unauthorized roads and trails leading into the excavation area to prevent accidental entry into the excavation area by motorized vehicles.

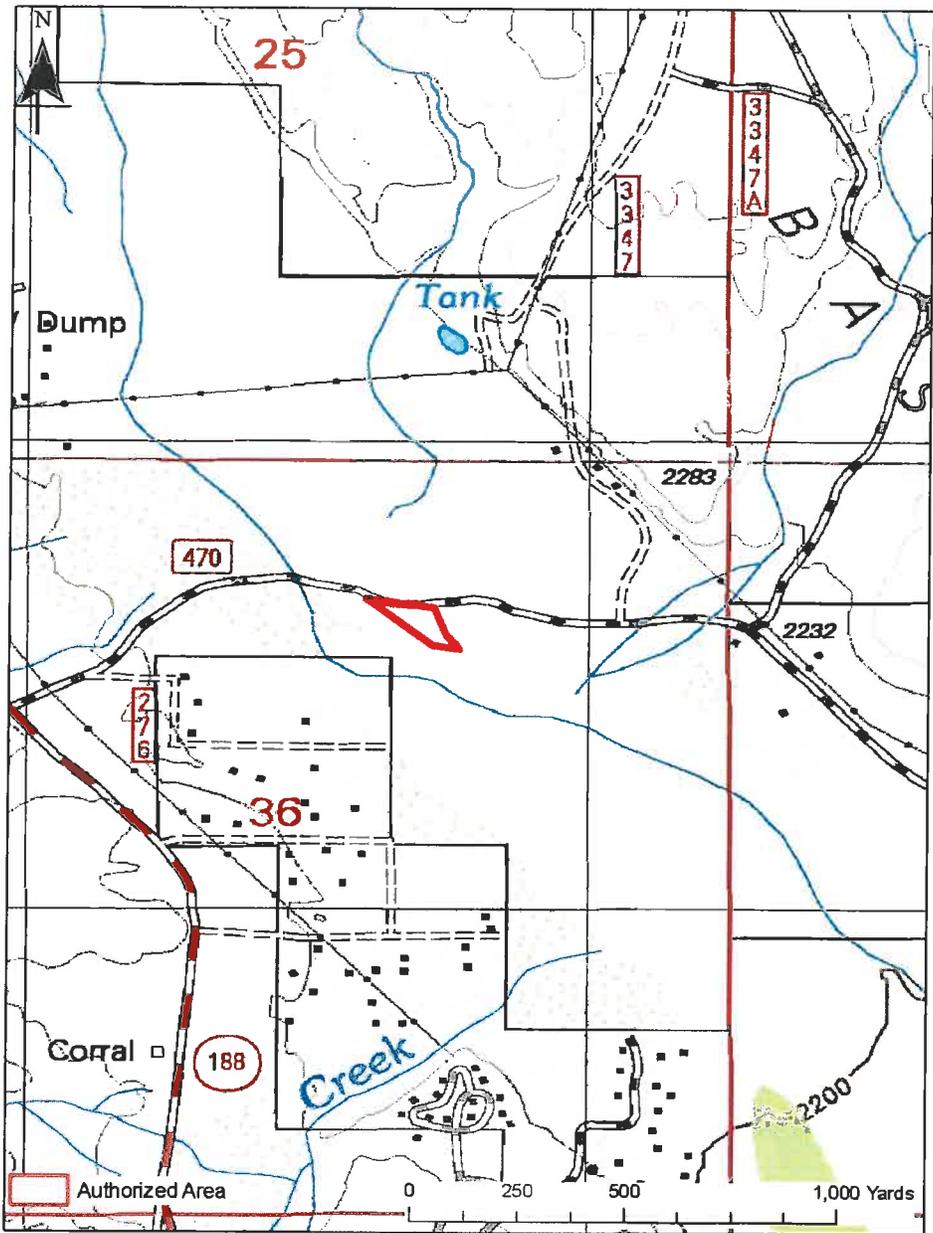
## **NOXIOUS WEEDS**

1. GILA COUNTY will minimize the spread of noxious weeds and weed seed in the excavation area.

Exhibit B



Site 1



Site 2





United States  
Department of  
Agriculture

Forest  
Service

Tonto Basin  
Ranger  
District

28079 N. AZ Hwy 188  
Roosevelt, AZ 85545  
Phone: 928.467.3200  
Fax: 928.467.3239

File Code: 1560

Date: February 8, 2011

Gila County Board of Supervisors  
ATTN: Mr. Michael A. Pastor, District II Supervisor  
1400 E. Ash Street  
Globe, AZ 85501

Dear Mr. Pastor:

This letter in conjunction with the enclosed Mineral Materials Contract serves as Forest Service written authorization for Gila County to complete specified flood mitigation projects on National Forest System Lands within Tonto Creek.

Specifically, this authorization provides for the removal of sandbars from Tonto Creek in the vicinity of the Store Crossing and Bar X Crossing and the removal of dead and down woody debris from Tonto Creek in the area from the Store Crossing to A + Crossing.

The following stipulations apply:

- All work will cease April 1, 2011. If there is no change in the federally listed species or designated critical habitat under the Endangered Species Act within the project area, then work can resume on December 1, 2011.
- My staff will mark the boundaries for the sandbar excavation work and coordinate closely with the Gila County Crew completing the work to ensure that those boundaries are known and understood by all. Excavations will not go deeper than the average elevation of the nearest road crossing.
- It is understood that excess mineral material from this project that is not directly used on other County projects will be stockpiled in the Blue Bird Pit.
- My staff will work ahead of the Department of Corrections Crew to flag the boundaries of sensitive areas to avoid completely during the removal of dead and down material and identify and designate suitable locations for piling and disposing of the dead and down debris. My staff will coordinate closely with the crew leaders so those sensitive area boundaries and disposal sites are known and understood by all.

Enclosed, please find two copies of a Contract for Mineral Materials. Please sign both copies and return one signed copy to me.

We look forward to working with Gila County on this project.



If you have any questions, please don't hesitate to call me at 928-467-3201.

Sincerely,

*/s/ Kelly L. Jardine*  
KELLY L. JARDINE  
District Ranger

Enclosures (2)