RESOLUTION 15-___

AUTHORIZING THE ACQUISITION OF RIGHT-OF-WAY FOR THE RAMSEY CANYON MULTI USE PATH, TRAVERSING ASSESSOR PARCEL NUMBERS 105-36-001 AND 105-36-002

WHEREAS, pursuant to A.R.S. § 28-6701, the Board of Supervisors, Cochise County, Arizona, may establish a highway and acquire real property for this purpose by purchase, donation, dedication, condemnation or other lawful means; and

WHEREAS, on December 16, 2014, the Board adopted Resolution 14-84 establishing a multi use path traversing Assessor Parcel Numbers 105-36-001 and 105-36-002, beginning 0.16 miles southwest of Calle Metate, heading east approximately 1.1 miles to Richards Road, as a county highway; and

WHEREAS, the County negotiated with and a counter offer has been proposed by the Newman Family to convey to the public right-of-way for said highway for $81,800.00 in accordance with an Agreement For Acquisition of Property, a copy of which is attached; and

WHEREAS, it will be mutually beneficial to the County and to the Newman Family to acquire this right-of-way,

NOW THEREFORE, IT IS RESOLVED that we, the Board of Supervisors, Cochise County, Arizona, do hereby authorize the acquisition of said right-of-way in accordance with said Agreement For Acquisition of Property.

IT IS FURTHER RESOLVED that the Chairman of the Board of Supervisors, or the Vice-Chairman, is authorized to execute said Agreement For Acquisition of Property and accept conveyance document(s) for said right-of-way acquisition.

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IT IS FINALLY RESOLVED that the Director of Community Development, or her designee, is authorized to act on behalf of the County to acquire said right-of-way.

PASSED AND ADOPTED by the Board of Supervisors of Cochise County, Arizona, this _____ day of _____, 2015.

_____
Richard Searle, Chairman
Cochise County Board of Supervisors

ATTEST:

_____
Arlethe Rios,
Clerk of the Board

APPROVED AS TO FORM:

_____
Britt W. Hanson,
Chief Civil Deputy County Attorney

AGREEMENT FOR ACQUISITION OF PROPERTY

THIS AGREEMENT for the Acquisition of Property is entered into between Cochise County, a political subdivision of the State of Arizona ("County") and the Don O. Newman and Betty L. Newman Revocable Living Trust dated May 29, 2008, through Trustees Don O. Newman and Betty L. Newman; the Ellen I. Wright Revocable Trust, dated August 19, 1991, through Trustees Ruth Arlen Thompson, Catherine Ellen Nunn, and Celeste W. Williams; Linda Lee Knepper; Rex A. Newman; and Newmans U Lazy U, L.L.C. (collectively, the "Newmans").

RECITALS

1. The County has proposed to construct and maintain a multi-use pathway adjoining Ramsey Canyon Road; the Newmans own property necessary for part of the pathway, as depicted on the map attached as Exhibit A to this Agreement, and the legal descriptions of which are attached as Exhibit B (Tax Parcel # 105-36-001, consisting of approximately 1.91 acres, hereinafter referred to as Parcel A), and Exhibit C (Tax Parcel #105-36-002), consisting of approximately 2.18 acres, hereinafter referred to as Parcel B). Parcels A and B are hereinafter referred to collectively as the "Property".

2. The County wishes to purchase, and the Newmans wish to sell, the Property on the terms and conditions set forth herein.

TERMS AND CONDITIONS

A. **Purchase Price.** Based on a price of $20,000/acre, the County shall pay the Newmans a purchase price of $81,800. The purchase price shall be paid in cash at closing, less prorated taxes.

B. **Escrow**. Upon mutual execution of this Agreement, the parties shall execute escrow instructions to Pioneer Title Agency, Inc., with an address at 8 Bisbee Road, Bisbee, AZ 85603 (**"Escrow Holder"**) to consummate the purchase. The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that the parties shall execute such additional instructions as requested by the Escrow Holder not inconsistent with the provisions of this Agreement.

C. **Due Diligence**. The County has exercised due diligence in the purchase of the Property and therefore does not need a due diligence period.

D. **Closing Date**. Closing shall be held at the office of the Escrow Holder on a date mutually acceptable to the County and Newmans, but no later than December 31, 2015 (the **"Closing Date"**), unless such Closing Date is extended upon the mutual written agreement of the County and the Newmans.

E. **Condition Precedent to Obligation of the Conservancy to Close**. The satisfaction or accomplishment of each of the following, at or before the Closing Date (or by any earlier date specified in this Agreement for performance, if any), shall be a condition precedent to the obligations of the parties and to purchase and sell the Property at the Closing:

i. The County shall have deposited into the Escrow all documents and monies required of the County under the terms of this Agreement and shall have performed, or be ready, willing, and able to perform, all of its obligations under this Agreement.

ii. The Newmans shall have deposited into the Escrow all documents required of the Newmans under the terms of this Agreement and shall have performed, or be ready, willing, and able to perform, all of its obligations under this Agreement.

F. **Title Commitment and Insurance**. Obtaining a title commitment and title insurance of the property shall be the responsibility of the County.

G. **Title**. At closing, the Newmans shall execute and deliver a good and sufficient special warranty deed, conveying good, insurable and marketable title to the Property to the County and its assigns, in fee simple free and clear of all monetary liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions of record or readily apparent upon inspection, together with unrestricted access and all other right, title and interest of the Newmans to the Property.

H. **Possession and Risk of Loss.** The Newmans shall deliver possession of the Property to the County at closing and shall bear the risk of loss until the delivery of such possession.

I. **Taxes**. The Newmans agree that all taxes, assessments and encumbrances that are a lien against the Property at closing shall be satisfied of record by the Newmans at or before closing. Regular real property taxes payable during the year in which closing shall occur shall be prorated as of closing.

J. **Costs and Fees**. The County shall pay all closing costs, including Escrow fees and any recording costs.

K. **Right of Entry**. The County may enter upon the Property at reasonable times for surveying, inspection and other reasonable purposes related to this transaction, provided, however, that the County shall indemnify the Newmans for any damage to the Property arising out of the County's exercise of its rights under this paragraph.

L. **Broker's Commission**. The County and the Newmans represent that it/they have not contracted with any broker or finder with regard to this transaction.

M. **Additional Terms of the Purchase and Sale**. Additional terms of the purchase and sale of the Property are set forth in Exhibit D, a letter from Sparkle Short, on behalf of the Newmans, to County Right of Way Agent II Pam Hudgins dated November 2, 2015, which is hereby incorporated by reference. The County agrees to honor the terms set forth therein. In the event that the County breaches any of those terms, the Newmans may seek relief, including injunctive relief, in Superior Court. Breach of those terms, however, shall not result in reversion of the Property.

N. **Binding Upon Successors.** The terms and conditions of this Agreement shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties.

O. **Notices**. Any notice, demand, request, consent or approval that either party desires or is required to give to the other party under this Agreement shall be in writing and shall be sent to the following relevant address:

TO THE NEWMANS:	TO THE COUNTY:
Sparkle Short 6216 S. LaDonna Ln. Hereford, AZ 85615	Board of Supervisors Attn: Clerk of the Board Cochise County 1415 Melody Lane, Building G Bisbee, AZ 85603

Notices may be sent by any of the following means: (i) by delivery in person, **(ii)** by certified U.S. mail, return receipt requested, postage prepaid, (iii) by Federal Express or other reputable "overnight" delivery service, provided that next-business-day delivery is requested by the sender; or (iv) by facsimile transmission or in electronic form by e-mail. Notices delivered in person shall be deemed effective immediately upon receipt (or refusal of delivery or receipt). Notices sent by certified mail shall be deemed given on the date deposited with the U.S. Postal Service. Notices sent by Federal Express or other reputable "overnight" delivery service shall be deemed given on the date deposited with the delivery service. Notices sent by facsimile transmission or in electronic form by e-mail shall be effective on the date of successful transmission. Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notice of change of address shall be effective only when done in accordance with this Paragraph. All notices complying with this Paragraph shall be effective only upon delivery.

P. **Miscellaneous**.

i. This Agreement may be executed in several counterparts and signatures may be delivered via telephone facsimile or in electronic form by e-mail, which shall constitute one agreement that is binding on all of the parties, notwithstanding that the parties may have signed different counterparts.

ii. If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.

iii. This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party hereto.

iv. Each party to this Agreement warrants to the other that the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.

v. This Agreement shall be governed by the laws of the State of Arizona.

APPROVED:

COCHISE COUNTY BOARD OF SUPERVISORS

By: _____
Richard Searle, Chairman Date

ATTEST:

_____
Arlethe Rios, Clerk of the Board Date

APPROVED:

By: _____
Betty L. Newman, Successor Trustee to Don O. Newman And Betty L. Newman, Trustees Of the Don O. Newman and Betty L. Newman Revocable Living Trust, dated May 29, 2008 Date

By: _____
Ruth Arlen Thompson Date

By: _____
Catherine Ellen Nunn Date

By: _____
Celeste W. Williams, Trustee Date
of the Ellen I. Wright Revocable
Trust, dated August 19, 1991

By: _____
Linda Lee Jeffries Date

By: _____
Rex A. Newman Date

By: _____
Newmans U Lazy U, L.L.C. Date
an Arizona Limited Liability
Company

EXHIBITS

EXHIBIT #	DESCRIPTION
EXHIBIT A	Map of Ramsey Canyon Multi-Use Path
EXHIBIT B	Legal Description from 105-36-001
EXHIBIT C	Legal Description from 105-36-002
EXHIBIT D	Letter from Sparkle Short dated November 2, 2015

EXHIBIT A

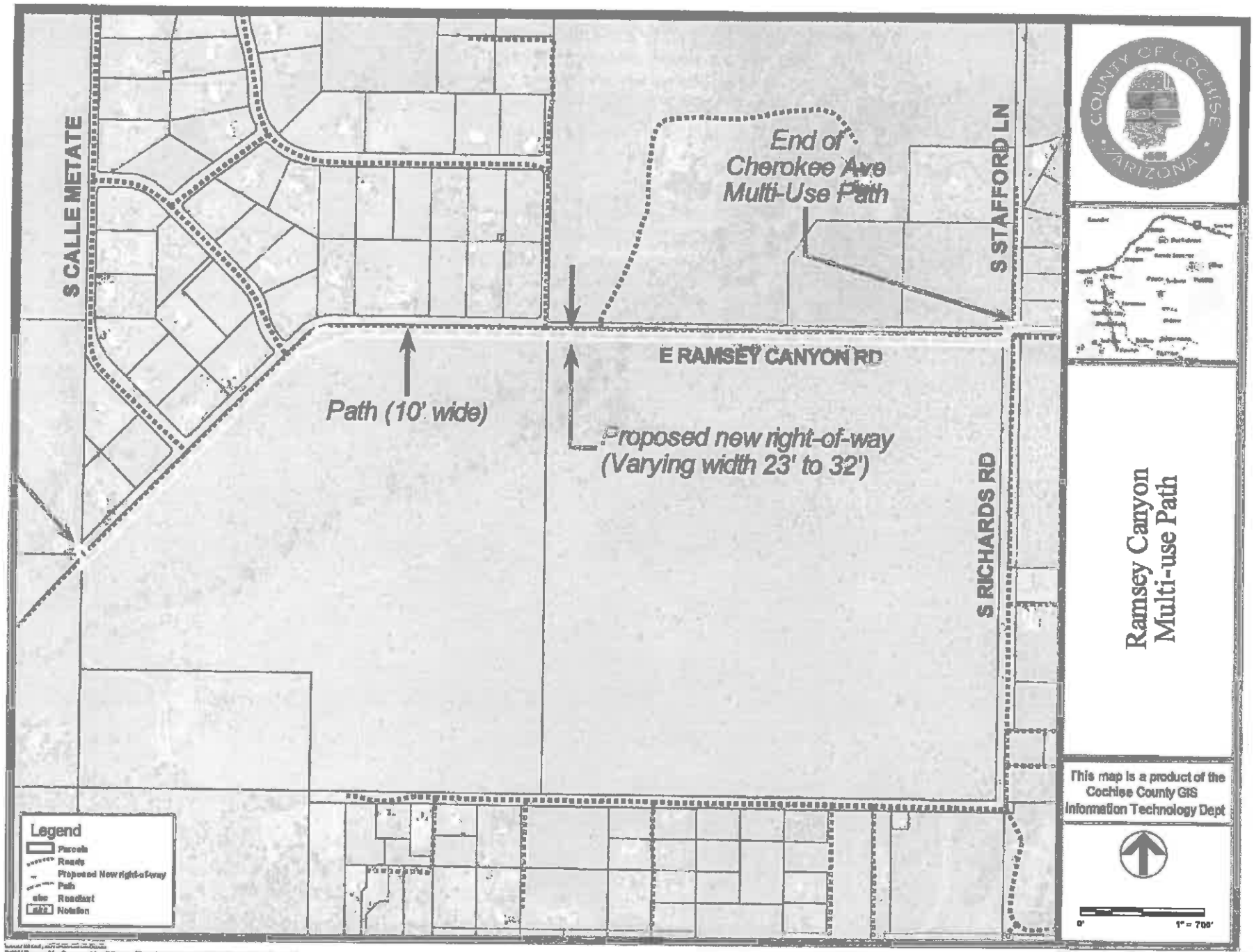
S CALLE METATE
End of
Cherokee Ave
Multi-Use Path
S STAFFORD LN
E RAMSEY CANYON RD
Path (10' wide)
Proposed new right-of-way
(Varying width 23' to 32')
S RICHARDS RD
Legend
Parcels
Roads
Proposed New right-of-Way
Path
Roadcart
Notation
COUNTY OF COCHISE
ARIZONA
Ramsey Canyon
Multi-use Path
This map is a product of the
Cochise County GIS
Information Technology Dept
0'
1" = 700'

EXHIBIT B

NEWMAN DON O. &
BETTY L. REV LIV TRUST
105-36-001

LEGAL DESCRIPTION

THAT PORTION OF SECTION 2, TOWNSHIP 23 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2" ALUMINUM CAP MONUMENTING THE CORNER COMMON TO SECTIONS 35 AND 36 OF TOWNSHIP 22 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN AND SECTIONS 1 AND 2 OF SAID TOWNSHIP 23 SOUTH, RANGE 20 EAST, THENCE THE FOLLOWING COURSES;

THENCE N 89°44'12"W A DISTANCE OF 50.00 FEET;

THENCE S 0°16'53"W, A DISTANCE OF 30.00 FEET TO THE POINT OF INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF RAMSEY CANYON ROAD AS DESCRIBED IN DOCKET 69, PAGE 107, RECORDS OF COCHISE COUNTY, ARIZONA AND THE WESTERLY RIGHT OF WAY OF RICHARDS ROAD AS DESCRIBED IN DOCKET 934, PAGE 365, RECORDS OF COCHISE COUNTY, ARIZONA. SAID POINT ALSO BEING THE **POINT OF BEGINNING;**

THENCE CONTINUING S 0°16'53"W ALONG SAID WESTERLY RIGHT OF WAY, A DISTANCE OF 32.00 FEET;

THENCE N89°44'12"W PARALLEL WITH THE SOUTHERLY R/W OF SAID RAMSEY ROAD, A DISTANCE OF 2594.91 FEET TO A POINT IN THE WESTERLY LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2;

THENCE N 0°39'40"E COINCIDENT **WITH** SAID WESTERLY LINE, A DISTANCE OF 32.00 FEET TO A POINT IN THE SOUTHERLY RIGHT OF WAY OF SAID RAMSEY CANYON ROAD AS DESCRIBED IN DOCKET 69, PAGE 107, RECORDS OF COCHISE COUNTY, ARIZONA;

THENCE S 89°44'12"E COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 2594.70 FEET TO THE **POINT OF BEGINNING.**

ABOVE DESCRIBED TRACT OF LAND CONTAINS 83032.7 SQUARE FEET OR **1.91** ACRES MORE OR LESS.

EXHIBIT C

NEWMAN, DON OLIVER
105-36-002

LEGAL DESCRIPTION

THAT PORTION OF SECTION 2, TOWNSHIP 23 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2" ALUMINUM CAP MONUMENTING THE QUARTER CORNER COMMON TO SECTION 35, TOWNSHIP 22 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER MERIDIAN AND SECTION 2 OF SAID TOWNSHIP 23 SOUTH, RANGE 20 EAST, THENCE THE FOLLOWING COURSES;

THENCE S 00°39'40"W COINCIDENT WITH THE EASTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 30.00 FEET TO A POINT IN THE EXISTING SOUTHERLY RIGHT OF WAY OF RAMSEY CANYON ROAD AS DESCRIBED IN DOCKET 69, PAGE 107, RECORDS OF COCHISE COUNTY, ARIZONA AND **POINT OF BEGINNING;**

THENCE CONTINUING S 0°39'40"W COINCIDENT WITH SAID EASTERLY LINE, A DISTANCE OF 32.00 FEET;

THENCE N 89°45'41"W PARALLEL TO THE SOUTHERLY RIGHT OF WAY OF RAMSEY CANYON ROAD AS DESCRIBED IN DOCKET 69, PAGE 107, RECORDS OF COCHISE COUNTY, ARIZONA, A DISTANCE OF 1133.85 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING THE FOLLOWING PARAMETERS: RADIUS = 80.00 FEET, DELTA = 22°01'47";

THENCE ALONG SAID CURVE, A DISTANCE OF 30.76 FEET TO THE POINT OF TANGENCY;

THENCE S 68°12'32"W, A DISTANCE OF 254.83 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING THE FOLLOWING PARAMETERS: RADIUS = 90.00 FEET, DELTA = 22°58'13";

THENCE ALONG SAID CURVE, A DISTANCE OF 36.08 FEET TO THE POINT OF TANGENCY;

THENCE S 45°14'19"W PARALLEL WITH THE SOUTHERLY R/W OF SAID RAMSEY ROAD AS DESCRIBED IN DOCKET 69, PAGE 115, RECORDS OF COCHISE COUNTY, ARIZONA, A DISTANCE OF 1721.18 FEET TO A POINT IN THE WESTERLY LINE OF SAID SECTION 2;

THENCE N 00°21'37"E COINCIDENT WITH THE WESTERLY LINE OF SAID SECTION 2, A DISTANCE OF 32.60 FEET;

THENCE N 45°14'19"E COINCIDENT WITH THE EXTENDED SOUTHERLY RIGHT OF WAY OF RAMSEY ROAD AS DESCRIBED IN DOCKET 69, PAGE 115, RECORDS OF COCHISE COUNTY, ARIZONA, A DISTANCE OF 65.15 FEET TO A POINT IN SAID SOUTHERLY RIGHT OF WAY;

THENCE N 45°14'19"E COINCIDENT WITH SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 1743.76 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING THE FOLLOWING PARAMETERS: RADIUS = 200.00 FEET, DELTA = 45°00'00";

THENCE ALONG SAID CURVE, A DISTANCE OF 157.08 FEET TO THE POINT OF TANGENCY. SAID POINT ALSO BEING IN THE SOUTHERLY RIGHT OF WAY OF RAMSEY CANYON ROAD AS DESCRIBED IN DOCKET 69, PAGE 107, RECORDS OF COCHISE COUNTY, ARIZONA;

THENCE S 89°45'41"E CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, A DISTANCE OF 1226.67 FEET TO THE **POINT OF BEGINNING.**

ABOVE DESCRIBED TRACT OF LAND CONTAINS 93,219 SQUARE FEET OR 2.14 ACRES MORE OR LESS.

EXHIBIT D

Cochise County
Community Development
Planning, Zoning and Building Safety Division

RECEIVED
NOV 2015
COCHISE COUNTY
HIGHWAY & FLOODPLAIN

November 2, 2015

Ms. Pam Hudgins
Cochise County
Right of Way Agent II

Thank you for the time you have spent working with us on the Multi Use Path to try and make Ramsey Canyon a safer place for everyone.

The following are the agreements we have consolidated into one document plus a couple of other issues that were discussed but not included in the original letters.

The project will require 1.91 acres across parcel 105-36-001, 2.18 acres across parcel 105-36-002, 4.09 acres total and the relocation of the existing fence.

As compensation for your property the County shall:

Install and maintain signage near the Multi-Use path regarding littering and pet leash laws. Also install and maintain 'No Trespassing' signs on the new fence along the path.

Install and maintain a state legal five (5) strand barbed wire fence along the Multi Use Path right-of way and connect to the remaining property fence.

When existing fence is removed, the T-posts will be returned back to the property owners.

Install floodgate fencing in the area traversed by Ramsey Canyon Creek.

Install 16' tubular livestock gates to preserve cattle access between family properties north and south of Ramsey Canyon Road.

Amended 10/29/15 - Right- of- Way permits would be issued for the two gate locations. The permits would be information only permits, no fees required. The permits would be automatically renewed on a yearly basis as long as the Newman family and/or descendants run cattle on the South and North side of Ramsey Canyon Road. This action will secure their rights to move the livestock.

Install and maintain cattle crossing signs on the east and west side of the livestock gate entrances. Because of liability issues the county will install and maintain the permanent "fold up" signs in the right of way.

The land would be grubbed (cleared of vegetation) 20 feet south of the new ROW fence line. The surplus wood will be stacked and placed on the south side of the new fence.

The Newman family would like the Multi Use Path to be called "Newman Trail" with a plaque at each end of the trail.

From the August 18, 2015 document from Cochise County Community Development. **Resolution 14-84 Establishing Ramsey Canyon Multi-Use Path as a County Highway.** " establishment of said multi-use path as requested in said petition is a public necessity, and that no landowner would be adversely affected thereby;" (does not count as one of property owners 5 splits).

Indemnify all reference said parties and uses from any claims in reference to the Multi Use Path right-of-way agrees to pay 100% legal cost.

Acquire Multi Use Path right-of-way based on $20,000 per acre. A total of $81,800.00 less any prorated property taxes which may need to be satisfied.

On behalf of the Newman Family,

Sparkle Short

Sparkle Short