



Janet Napolitano
Governor

Victor M. Mendez
Director

NEW APPLICATION

Arizona Department of Transportation

Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213



0000020417

2005 MAY -4 P 1:34

John A. Bogert
Chief of Staff

ORIGINAL

May 4, 2005

AZ CORP COMMISSION
DOCUMENT CONTROL

Mr. G. Robert Starkey
Railroad Safety Specialist
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

RR-03639A-05-0327

Re: Project No. STP 085-B-602
Federal Aid Project No. STP 085-B (013)
085 MA 150 H5955 44U
Agreement No. 2421-04-UPRR and Addendum #1
Gila Bend-Buckeye Highway
AAR/DOT No. 741 769X and 922 558V
Union Pacific Railroad

Arizona Corporation Commission

DOCKETED

MAY 04 2005

DOCKETED BY 

Dear Mr. Starkey:

Please furnish our office with an Opinion and Order to cover the changes in the railroad crossings described in the subject Agreement and Addendum #1. The State proposes to reconstruct State Route 85 as an elevated controlled access highway at some future date. The existing State Route 85 will then become the northbound frontage road for the new highway. In addition, a new southbound frontage road will be constructed prior to construction of the new highway. While the southbound frontage road is being constructed, the existing State Route 85 will continue to carry two-way traffic.

New railroad signal foundations will be installed on the south side of the existing grade crossing (AAR/DOT No. 741 769X) on the existing State Route 85 to accommodate railroad signals for one-way vehicular traffic at such time as the existing State Route 85 becomes the northbound frontage road. Signal foundations will be installed on the north side of the new grade crossing (AAR/DOT No. 922 558V) on the new southbound frontage road to accommodate railroad signals for one-way vehicular traffic at such time as that road is placed into service as the southbound frontage road for the new highway. However, an additional signal foundation will be installed in the southeast quadrant of the new grade crossing on the southbound frontage road so that two-way vehicular traffic can be accommodated on this road for up to ninety (90) days, if necessary, during construction of the new highway.



2001 Award Recipient

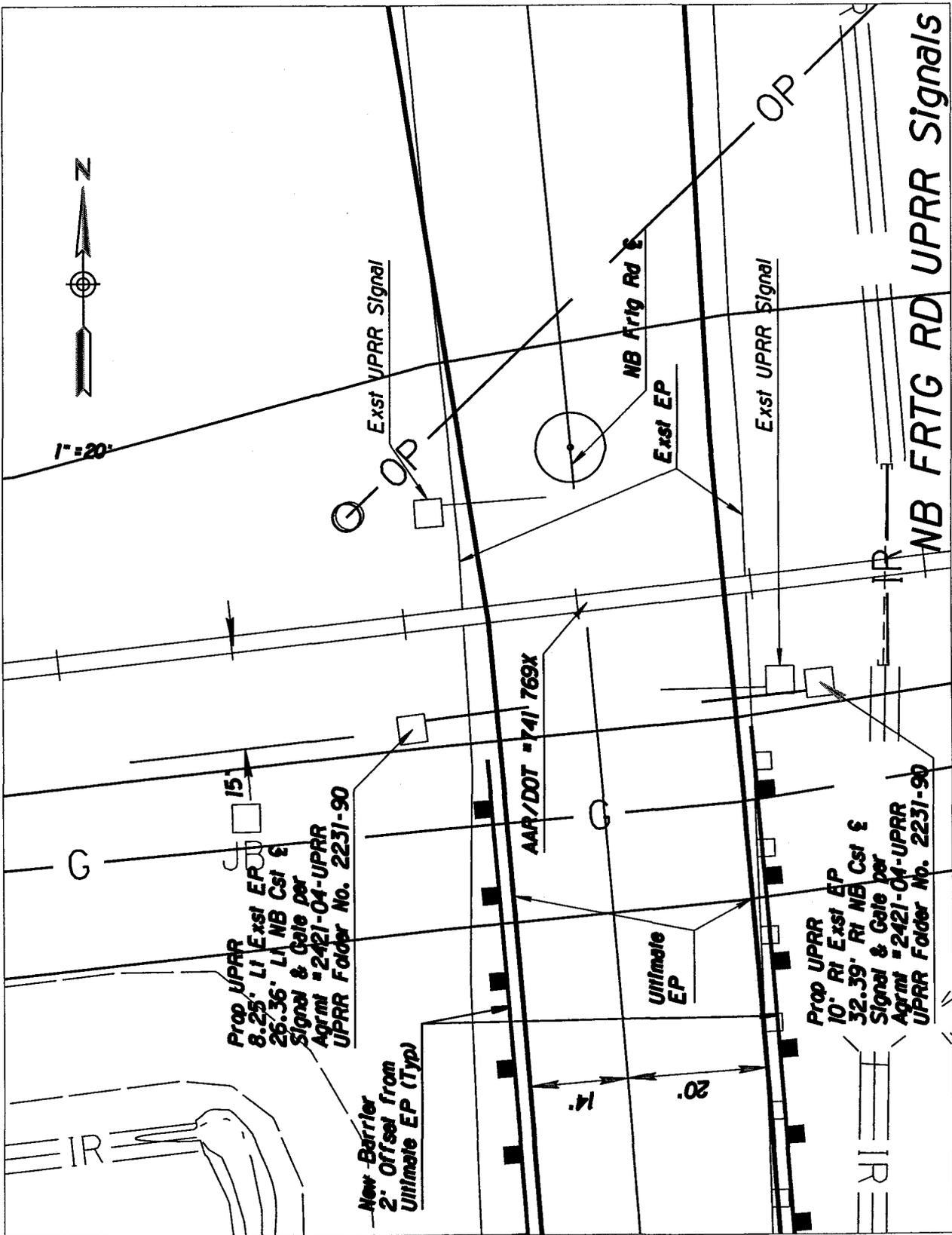
The Railroad Company has signed an Agreement and Addendum #1 covering the work, thirteen (13) copies of which are attached for your information and files. I have also enclosed drawings of showing the signal locations on the northbound and southbound frontage roads for clarity.

After the Opinion and Order has been issued, we will send you a copy of our letter authorizing the Railroad to proceed with the work.

Sincerely,


Michael F. Delleo, Jr., P.E.
State Railroad Liaison

Attach.



1"=20'

Exst VIPRR Signal

NB Frtg Rd

Exst EP

Exst UPRR Signal

NB FRTG RD UPRR Signals

Prop UPRR
8.25' Lt Exst EP
26.36' Lt NB Cst &
Signal & Gate per
Agrmt #2421-04-UPRR
UPRR Folder No. 2231-90

AAR/DOT #741 769X

Ultimate EP

Prop UPRR
10' Rt Exst EP
32.39' Rt NB Cst &
Signal & Gate per
Agrmt #2421-04-UPRR
UPRR Folder No. 2231-90

New Barrier
2' Offset from
Ultimate EP (Typ)

4'

20'

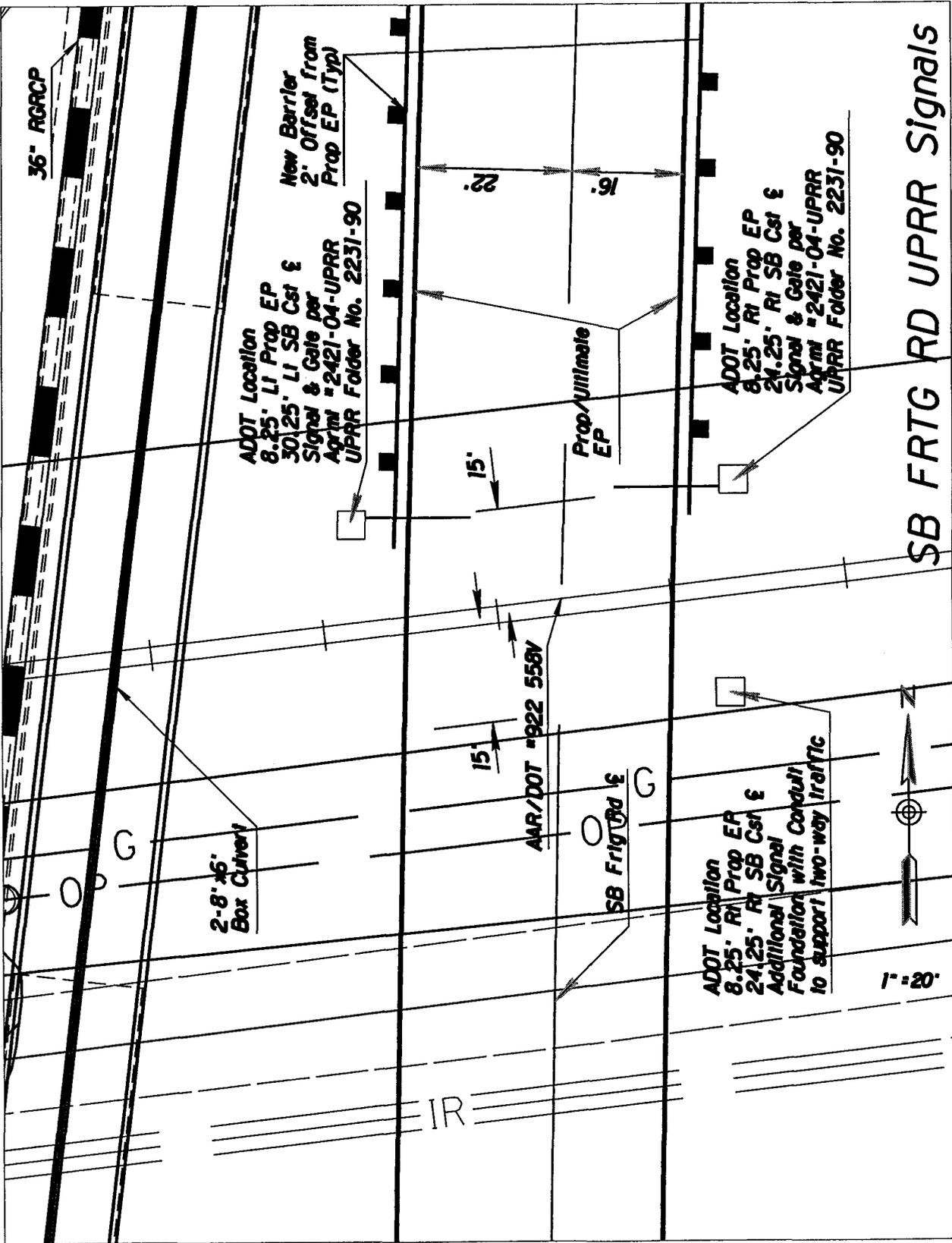
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OP

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SB FRTG RD UPRR Signals

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

INITIAL HERE
BV

TRACS No. 085 MA 150 H5955 44U Location Santan SR 85 Jct. I-10 to Gila River Bridge
Project No. STP 085-B-602
Agreement No. 2421-04-UPRR UPRR Audit No. 233699 Agreement Addendum No. 1
Original Agreement AG Contract # KR 04 - 1052 TRN

Company's Name The Union Pacific Railroad Company
Address 10031 Foothills Blvd Roseville, CA 95747

The Union Pacific Railroad Company hereby agrees to modify the existing referenced Agreement with the Arizona Department of Transportation in accordance with the original Agreement, the modified provisions of this form and the attached sheets, if any, and The Union Pacific Railroad Company agrees to receive and accept as full compensation therefor the payment provided in the Agreement as modified herein.

INITIAL HERE
BV

WHEREAS: UPRR has agreed to construct an additional warning signal foundation and conduits in the southeast quadrant of the grade crossing on the new southbound frontage road per the attached Exhibit A to accommodate two-way traffic for approximately ninety (90) days while work is being performed in other areas.

WHEREAS: UPRR has agreed to relocate the warning signal and gate form its temporary location to the permanent foundation in the northeast quadrant of the grade crossing when one-way traffic is restored to the southbound frontage road.

INITIAL HERE
BV

THEREFORE: The parties hereto agree that Agreement No. 2421-04-UPRR is hereby amended as shown on the attached Exhibit B at a cost of \$28,617.00. The Agreement Estimate will now increase to ~~\$609,637~~ ^{#599,231.00}. All other provisions of Agreement No. 2421-04-UPRR shall remain unabrogated.

The Arizona Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay same; provided, that by mutual consent this agreement may be modified or terminated at any time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

By Bruce Vana
Bruce Vana, P.E., Manager
Utility & Railroad Engineering Section

Date 4-13-05

UNION PACIFIC RAILROAD COMPANY

By [Signature]
Title Director-Contracts

Date 4/25/05

ADOT ORIGINAL

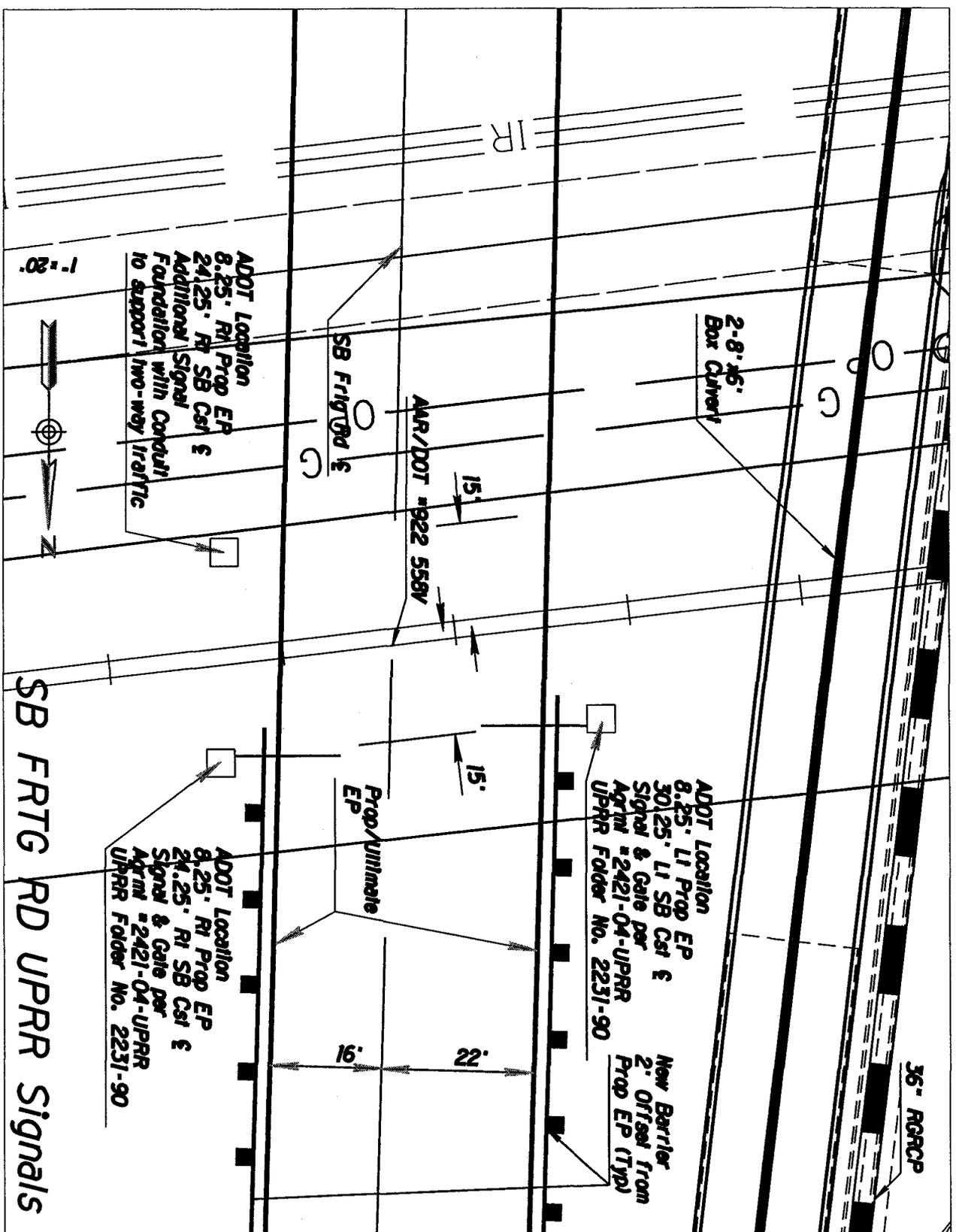


EXHIBIT "A"

EXHIBIT B

Installation of Temporary Railroad Crossing Signal Foundation at SE
Quadrant of Southbound Frontage Road

ADOT PROJECT COSTS

| | |
|---|-------------|
| Labor | \$15,483.00 |
| Materials: | |
| Five (5) Conductor, #6 Cable, 3000 ft. | \$5,907.00 |
| Seven (7) Conductor, #14 Cable, 3000ft. | \$7,227.00 |
| | <hr/> |
| Total | \$28,617.00 |

EXHIBIT "B"

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

and

UNION PACIFIC RAILROAD COMPANY

AGREEMENT No.: 2421-04-UPRR
UTILITY TRACS No.: 085 MA 150 H5955 44U
UTILITY PROJECT No.: STP 085-B - 602
FEDERAL AID PROJECT No. STP 085-B(013)
HIGHWAY: GILA BEND-BUCKEYE HWY
LOCATION: SR 85 MP 150.41-MP 151.0
SR 85 NB Frontage Rd RRMP 873.38 AAR/DOT # 741 769X
SR 85 SB Frontage Rd RRMP 873.28 AAR/DOT # 922 558V
UPRR Folder No. 2231-90

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| Signature & Notary Public Pages | 17 |
| Exhibit A | Summary Of Costs To Be Paid By This AGREEMENT |
| Exhibit A-1 | UPRR’s Material and Force Account Estimate to remove, and replace track components to accommodate an open cut installation of the STATE’s drainage structure; |
| Exhibit A-2 | UPRR's Material and Force Account Estimate to construct, remove, adjust, and install new gates and signals and surface for the existing (RRMP 873.38 AAR/DOT # 741 769X) at grade crossing, to serve as the northbound frontage road at grade crossing serving SR 85. |
| Exhibit A-3 | UPRR's Print and Signal Design Plan for the existing at grade crossings, to serve as the northbound frontage road at grade crossing serving SR 85. |
| Exhibit A-4 | UPRR's Material and Force Account Estimate to Construct, and install gates and signals and surface for the (RRMP 873.28 AAR/DOT # 922 558V) at grade crossing, to serve as the southbound frontage road at grade crossing serving SR 85. |
| Exhibit A-5 | UPRR's Print and Signal Design Plan to Construct, and install gates and signals and surface for the at grade crossings, to serve as the southbound frontage road at grade crossing serving SR 85. |
| Exhibit B | Print Showing Additional UPRR property that STATE needs to construct the PROJECT. |
| Exhibit C | Legal Description of Additional UPRR property that STATE needs to construct the PROJECT |
| Exhibit D | Form of the Highway Grant from UPRR to STATE |

THIS AGREEMENT made this 23rd day of August, 2004, between the UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation, hereinafter called, "UPRR", and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE".

RECITALS:

UPRR owns and operates a line of railroad known as its Phoenix Subdivision in and through the County of Maricopa, near the Town of Buckeye, Arizona.

The STATE proposes to reconstruct State Route 85 as an elevated CONTROLLED ACCESS Highway at some future date under separate documents. Mainline traffic, in the future, will travel on a STRUCTURE over railroad facilities at RRMP 873.33 AAR/DOT # 922 557V. Now, and together with this project, the existing at grade crossing (RRMP 873.38 AAR/DOT # 741 769X) will be modified to serve local northbound frontage road traffic only. A new at grade crossing (RRMP 873.28 AAR/DOT # 922 558V) will be constructed to serve local southbound frontage road traffic only.

The parties hereto desire to express in writing their understanding and agreement with respect to responsibilities for the construction and maintenance of facilities effected by the PROJECT and pursuant to which the frontage roadways and other improvements are to be constructed and maintained.

All lettered exhibits are incorporated and made a part of this agreement by reference and attachment regardless of designation or alphabetical order.

1) DEFINITIONS

A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference. The STATE AGREEMENT number for this PROJECT is 2421-04-UPRR

B. CONSTRUCTION PROJECT NUMBER means the roadway construction project number utilized for the STATE construction project, which is STP 085-B(013).

C. CONTROLLED ACCESS means locations where owners or occupants of abutting lands and other persons have no legal right of access, e.g., freeway lanes and freeway ramps.

D. COST ACCUMULATION NUMBER means a unique UPRR cost accrual number of all costs incurred by UPRR in connection with RAILROAD WORK performed by UPRR in connection with the PROJECT.

E. EMERGENCY WORK by UPRR means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or UPRR property.

F. **PLANS** means the final one hundred percent completed **PROJECT** plans and specifications prepared by **STATE** and identified with **STATE's CONSTRUCTION PROJECT NUMBER** that have been approved, as to **UPRR** involvement activity, in writing by **UPRR's Chief Engineer for Design** or his authorized representative.

G. **PROJECT** means all work of every kind and character required in connection with all reconstruction of **SR 85** where **SR 85** crosses **UPRR** railroad facilities, located just south of **Baseline Road**. The **PROJECT** includes, but is not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, communication lines, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, irrigation facilities, signing and striping, modification to utilities, right of way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on the **STATE's PROJECT PLANS** and specifications included herein by reference only.

H. **RAILROAD WORK** means the work to be performed by **UPRR**, at **STATE's** expense, which is described in the **UPRR ESTIMATES**. The **RAILROAD WORK** shall include any work performed by **UPRR** or its contractors and agents, including, without limitation, any pre-engineering, engineering, management, administration, design, review or preparation of plans and specifications, inspection and construction labor, materials and equipment as set forth in the **AGREEMENT**, including approved changes in scope. Work for flagging protection shall be billed directly to the **STATE's** Contractor who will apply for right of entry as directed in the **PROJECT PLANS**.

I. **STRUCTURE** means the future **SR 85th Overhead Structure**. The design will be detailed in future **PLANS**.

J. **UPRR ESTIMATES** means the **UPRR's** Material and Force Account Estimates, marked **Exhibits A-1, A-2, and A-4** and as described and shown on **UPRR's** Print and Signal Design Plan marked **Exhibits A-3, and A-5**.

K. **UTILITY TRACS NO.** means **STATE's** utility relocation Accounting number utilized for **UPRR's** relocation work, which is 085 MA 150 H5955 44U.

L. **WORK** means the work to be performed by **STATE's** Contractor and agents within **UPRR's** right of way in accordance with the **PROJECT PLANS**. **WORK** shall include engineering, management, administration, design, and construction labor, including approved changes in scope.

M. **WORK ORDER NUMBER** means a unique **UPRR** cost accrual number of all costs incurred by **UPRR** in connection with **RAILROAD WORK** performed by **UPRR** in connection with the **PROJECT**.

AGREEMENT:

ARTICLE I

IN CONSIDERATION of the covenants of the STATE hereinafter set forth, and the faithful performance thereof, UPRR agrees as follows:

1. For and in consideration of Twenty Eight Thousand Nine Hundred Eighty Two Dollars (\$28,982) to be paid by STATE to UPRR, UPRR shall execute and deliver to STATE a Highway Grant in the form marked Exhibit D, whereby UPRR grants to STATE the right to construct, use, maintain, repair, renew and reconstruct the at-grade crossing and frontage road along and over the portions of UPRR's property shown as Tract 1 consisting of 21,782 square feet, more or less, and the right to construct, use, maintain, repair, renew and reconstruct the at-grade crossing and frontage road, roadway drainage box culvert, and irrigation pipe along and over the portions of UPRR's property shown as Tract 2 consisting of 31,517 square feet, more or less, as such Tracts are shown crosshatched on the print marked EXHIBIT B, Sheet 2 of 2 and also described in the legal descriptions marked EXHIBIT C Page 1 and Page 2. STATE agrees to pay UPRR the \$28,982 consideration within ninety (90) days of its receipt of an executed Highway Grant from UPRR.
2. For and in consideration of Two Thousand Five Hundred Dollars (\$2,500) to be paid by STATE to UPRR, UPRR hereby grants to STATE the right to temporary use for temporary construction purposes and for a period of 18 months from the last date of signing of this AGREEMENT or until STATE's completion of the PROJECT, whichever occurs first, a ten-foot wide area consisting of 1,106 square feet, more or less, as shown on EXHIBIT B. The temporary rights granted herein are subject to the terms and conditions contained herein and to all prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect such property, whether recorded or unrecorded, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof. The temporary rights granted herein are also made subject to the prior and continuing right and obligation of UPRR, its successors and assigns, to use all of such property in the performance of its duty as a common carrier, and there is reserved unto UPRR, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, repair, use and operate existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along such property and UPRR may also move equipment of all types on, along and over such area.
3. To furnish all labor, materials, tools, and equipment and do RAILROAD WORK required due to the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown in the UPRR ESTIMATES marked Exhibits A-1 through A-5 attached hereto and made a part hereof. In the event that construction of the PROJECT has not commenced within six (6) months from the date of the preparation of the estimated cost, as shown in upper right corner of the estimated cost, UPRR may, in its sole and absolute discretion, revise the UPRR ESTIMATES. In such case, UPRR shall provide to the STATE

its revised cost estimates highlighting all changes that are made. Any changes to the scope of this AGREEMENT or work to be performed by RAILROAD under the PROJECT or this AGREEMENT after this Agreement is signed by both parties shall be approved in writing by both parties and shall be included as an addendum to this AGREEMENT. Any item of work incidental to those items listed in UPRR ESTIMATES, but not specifically mentioned therein, may be included as part of this AGREEMENT as an item of work upon written approval of STATE, if practicable and subject to applicable Federal Regulations, if any. Construction of the PROJECT shall include the following RAILROAD WORK by UPRR:

- (a) The furnishing of preliminary and final engineering and contract plan preparation;
 - (b) The making of such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under its tracks as may be required to accommodate construction of said PROJECT;
 - (c) The furnishing of such watchmen and flaggers as may be necessary for the safety of UPRR's property and the operation of its trains during construction of the PROJECT, payment for flagging protection will be made directly by the STATE's Contractor to UPRR based on invoices to the STATE's Contractor for actual work specific for flagging protection;
 - (d) The furnishing of engineering and inspection as required for construction of the PROJECT;
 - (e) Remove, and replace track components to accommodate an open cut installation of the STATE's drainage structure and irrigation pipe
 - (f) Remove, adjust, and install new gates and signals and surface for the existing (RRMP 873.38 AAR/DOT # 741 769X) at grade crossing, to serve as the northbound frontage road at grade crossing;
 - (g) Construct, and install gates and signals and surface for the (RRMP 873.28 AAR/DOT # 922 558V) at grade crossing, to serve as the southbound frontage road at grade crossing.
 - (h) The installation and use of vehicular traffic control devices as necessary per the MUTCD guidelines to construct the required gates, signal lights, crossing surface material and related appurtenances. UPRR may coordinate with STATE's Contractor to jointly utilize those devices supplied by STATE's Contractor. UPRR shall supply traffic control devices when necessary in such case, as scheduling will not permit joint utilization of STATE contractor's equipment.
4. To do all work provided in Article I, paragraph 3 above with its own employees working under Railroad Labor Agreements or by contractor (s), if necessary, and reimbursed by STATE on an actual cost basis.

5. If construction for the PROJECT has not commenced within two years from the date of this AGREEMENT, the Highway Grant shall be rescinded by issuance of a recordable release document by STATE to UPRR, the AGREEMENT will become null and void and all expended funds paid by STATE for said Highway Grant shall be returned to STATE by UPRR.
6. Prior to submitting the first invoice to STATE, UPRR will notify STATE, in writing, of the actual UPRR construction start date. UPRR construction start date shall not be prior to receiving a notice to proceed from STATE. Prior to submitting the final invoice to STATE, UPRR agrees to notify STATE, in writing, of the actual UPRR construction completion date.
7. UPRR may submit to STATE monthly invoices for the RAILROAD WORK costs from the date of STATE's authorization for UPRR to proceed with the RAILROAD WORK. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. UPRR shall, within one hundred and twenty (120) days after completion of RAILROAD WORK, submit to STATE detailed invoices covering the actual cost of all work, including applicable taxes and standard UPRR overhead and subcontracting administration lump sum fee. Invoices shall include the appropriate AGREEMENT number, UTILITY TRACS number, and COST ACCUMULATION NUMBER or WORK ORDER NUMBER, and shall be labeled as "Progress Invoice" or "Final Invoice", as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition Regulations. The United States Code of Federal Regulations, 23CFR 646 B is incorporated into this AGREEMENT by reference.
8. UPRR shall submit invoices for flagging protection directly to the STATE's Contractor who has applied for right of entry. UPRR shall within one hundred and twenty (120) days after the STATE's Contractor has given notice to UPRR of completion of work, provide the STATE's Contractor with complete billing for flagging protection.
9. UPRR shall make every effort in the design of its facilities to avoid conflicts with known underground utilities. The known location of underground utilities can be found in the STATE's supplied progress prints to UPRR of the PROJECT or by calling the STATE's design engineer, Stanley Consultants Inc. 602-912-6500, and fax 602-912-6577.
10. UPRR agrees to coordinate with STATE's Contractor with respect to construction schedule and work related items for the safe and effective progress of the RAILROAD WORK. When UPRR receives an "Application For Right Of Entry" from STATE's Contractor UPRR shall begin a dialog with STATE's Contractor to mutually schedule and coordinate their respective work. STATE's Contractor and representatives of UPRR shall meet or communicate on a monthly basis to review the WORK and RAILROAD WORK completed to date and together schedule future work items. UPRR shall commit labor and materials necessary to respond within 30 days to work activities identified by STATE's Contractor to be initiated by UPRR, however UPRR shall have no liability to STATE or any other person or entity if UPRR does not complete the RAILROAD WORK within such anticipated time frame.

11. UPRR shall be given progress copies of the STATE's design plans at the 30%, 60% and 95% level along with a copy of the final PS&E submittal by the STATE's Consultant. UPRR shall review such plans and provide to the STATE the changes that are needed with regard to UPRR facilities. If after review of the final PS&E submittal UPRR sees no significant changes affecting UPRR facilities from the previous submissions UPRR shall signify by letter, addressed to the STATE (see Article III paragraph 28), their approval of the design PLANS as to the impacts to UPRR facilities.
12. That STATE shall have the right to request that any UPRR Contractor or any employee of a UPRR Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event UPRR or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination.

ARTICLE II

IN CONSIDERATION of the covenants of UPRR herein set forth and the faithful performance thereof, STATE agrees as follows:

1. To provide to UPRR the design plans as set forth in Article I, Section 11. A copy of the final STATE PROJECT PLANS and specifications are hereby adopted and incorporated into this Agreement by reference.
2. To make application to the Arizona Corporation Commission for an order authorizing construction of the Project together with a copy of this AGREEMENT.
3. To make any and all arrangements to secure the location or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than UPRR which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the PROJECT. UPRR shall work closely with STATE design personnel to identify points of conflict between new UPRR facilities and existing utility facilities.
4. To reimburse UPRR for work of an emergency nature caused by STATE or STATE's Contractor, in connection with the PROJECT that UPRR deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or UPRR property. Such work may be performed by UPRR without prior approval of STATE however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages the matter will be resolved through either compromise, arbitration or adjudication. Pursuant to A.R.S. Section 12-1518, the parties shall use arbitration, after exhausting applicable administrative

remedies, to resolve disputes arising out of this AGREEMENT where the sole relief sought is monetary damages of \$100,000 or less exclusive of interest and costs.

5. To furnish all labor, materials, tools and equipment in performing the WORK in conformance with the PLANS to be performed by STATE as hereafter provided. Construction with respect to said PROJECT shall be undertaken by STATE's Contractor and shall be performed in a manor as to not interfere with the safe and timely operations of UPRR's locomotives, trains, cars and on-track maintenance equipment or other UPRR tracks or facilities. STATE will notify UPRR when WORK is complete and ready for final inspection by UPRR.
6. To be solely liable for the full cost and construction of the PROJECT as described herein and as generally shown on **Exhibit B**, sheets 1 and 2 and on the PROJECT PLANS and specifications except for those items of RAILROAD WORK identified to be paid for by UPRR as betterments listed under Article III, Paragraph 7.
7. To incorporate in each prime contract for construction of the Project, or the specifications therefore, the provisions set forth in this Article II, paragraphs 3, 5, 8, 9, 10, 11, 12, and in Article III, paragraph 4, 5, 8, and the provisions set forth in the "Right of Entry" documents, attached hereto by reference.
8. To require its contractor(s) to notify UPRR's Manager of Track Maintenance or Designated Representative at least 15 calendar days in advance of commencing work on UPRR property or near UPRR's tracks, when requesting a UPRR flagger in accordance with the requirements of the Right of Entry documents in order to protect UPRR from damage or interference to UPRR's trains and property.
9. To require its contractor(s) to coordinate their work each day with UPRR's operations, prior to commencing any construction activity that may effect UPRR operations, by contacting UPRR's Manager of Track Maintenance.
10. To require its contractor(s) to furnish UPRR's Manager Structure Design (through UPRR's Manager – Industry and Public Projects), for approval, five copies of plans and two sets of calculations for any falsework, shoring or cribbing proposed to be used over, under, or adjacent to UPRR's tracks. The use of such falsework shoring or cribbing shall conform to the standard clearances required by the Commission or UPRR, whichever is more stringent. In case the use of such shoring will impair said clearance, STATE will ensure that application is made to the Commission, for approval of such impairment during the period of construction of the PROJECT.
11. To ensure that all existing UPRR maintenance roadways will remain open at all times during construction.
12. To include the following provisions in its contract with any Contractor performing WORK on said PROJECT:

- (a) Fiber optic cable systems owned by various telecommunication companies may cross or run parallel in UPRR's rail corridor. The Contractor shall be responsible to contact UPRR and/or the telecommunications companies to determine whether there are any fiber optic cable systems located within the PROJECT boundaries that could be damaged or their service disrupted due to the construction of the PROJECT. The Contractor shall also pothole all lines either shown on the PLANS or marked in the field in order to verify their locations. The Contractor shall also use all reasonable methods when working in the UPRR rail corridor to determine if any other fiber optic lines may exist.
- (b) Failure to notify, pothole or identify these lines shall be sufficient cause for the STATE Engineer to stop construction at no cost to the STATE or UPRR until these items are completed. Costs for repairs and loss of revenues and profits due to damage to these facilities through negligent acts by the Contractor shall be the sole responsibility of the Contractor. The Contractor shall indemnify and hold the State and UPRR harmless against and from all cost, liability and expense arising out of or in any way contributed to these negligent acts of the Contractor.
- (c) The telecommunication companies, at STATE'S expense if prior rights are demonstrated, shall be responsible for the rearrangement of any facilities determined to interfere with the construction. The Contractor shall cooperate fully with any company performing these rearrangements.
- (d) All work performed within the limits of UPRR's right of way shall be performed in a good and workmanlike manner, and in accordance with PLANS and specifications. Those changes or modifications during construction that effect safety or UPRR's operations shall also be agreed to by both parties.
- (e) No work, including the construction of this PROJECT and/or any subsequent maintenance, shall be commenced within UPRR's right of way until each of the prime Contractors employed by the STATE in connection with said WORK shall have executed and delivered to UPRR the Contractor's Right of Entry documents and secured UPRR's approval of the required insurance and endorsements. Work by STATE personnel shall follow guidelines established in Article III paragraph 11. Each prime contractor shall confirm in writing to STATE and UPRR that it is liable for all acts or omissions of its subcontractors and that all insurance carried by the prime contractor covers the acts and omissions of its subcontractors as specified in the Contractor's Right Of Entry Documents.
- (f) If the STATE's Contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to UPRR as contained in the original contract between the STATE and the first Contractor.
- (g) That UPRR shall have the right to request that any State Contractor or any employee of a Contractor who performs work within UPRR's right of way and which affects

UPRR's operations or facilities, be removed from UPRR right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event State or its Contractor elects not to honor such request, UPRR may stop work within its right of way until the matter has been fully resolved to UPRR's satisfaction. Before such action is taken the matter will be attempted to be resolved through the UPRR Manager of Track Maintenance or Designated Representative if the problem occurs during the initial construction or during a subsequent maintenance efforts. UPRR shall make the final determination.

(h) State's agents, contractors, representatives and invitees shall comply with the safety requirements set forth in UPRR's Contractor's Right of Entry Agreement.

13. STATE shall supervise the operations of all STATE's Contractors through the use of inspectors who are qualified to inspect the type of work being performed. Furthermore, if at any time during construction, UPRR discovers that any STATE inspection personnel are not properly inspecting the construction of UPRR facilities, UPRR shall have the right to request STATE to arrange for the immediate replacement of the inspection personnel who are not performing proper inspections.

14. UPRR shall, if necessary, temporarily suspend RAILROAD WORK activity on the PROJECT to attend work of an emergency nature elsewhere in the region. UPRR will not be subject to penalties as a result of such delays. Despite any such delay, UPRR shall work as expeditiously as possible under the circumstances to complete the RAILROAD WORK. If UPRR's RAILROAD WORK is impacted by circumstances beyond its control, UPRR's schedule duration (see Article I paragraph 10 above) shall be extended for a period of time equal to the delay.

15. STATE agrees to pay UPRR the invoiced amount within ninety (90) days of receipt, provided UPRR has complied with all conditions of this AGREEMENT. The STATE also agrees to pay UPRR for any flagging invoices not paid by any STATE contractor's within (90) days of its receipt of billing subject to STATE review of construction accounts to prevent double billing.

16. UPRR is hereby authorized to include a charge, equal to the amount allowed by the Federal Highway Administration, at the time of billing, to cover the cost of labor additive and "Other Benefits" identified in the Federal audit of UPRR charges and fees currently approved. Such charge shall be considered a portion of the actual cost of the RAILROAD WORK.

ARTICLE III

IN CONSIDERATION of the premises, it is mutually agreed as follows:

1. That all work contemplated in this Agreement shall be performed in a good and workmanlike manner in accordance with the PLANS and specifications. Each portion shall be promptly commenced by the parties hereto obligated to do the same and thereafter diligently

prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction that affect the RAILROAD WORK obligated by UPRR shall be agreed to by both parties in writing and attached as an amendment to this AGREEMENT.

2. That such work as defined in the PLANS, specifications and this AGREEMENT is subject to the Commission's approval, with minimum clearances of not less than those specified by the Commission, or as otherwise authorized by the Commission for UPRR's tracks at this location.
3. In the event of an unforeseen railroad emergency, UPRR reserves the right to reallocate all or a portion of its labor forces assigned to perform the RAILROAD WORK when UPRR believes such reallocation is necessary to provide for the immediate restoration of railroad operations of UPRR or its affiliates or to protect persons or property on or near any UPRR owned property or any related railroad. UPRR will reassign such labor forces to again perform the RAILROAD WORK when, in its sole but good faith opinion, such emergency condition no longer exists. UPRR will not be liable for any additional costs or expenses of the PROJECT resulting from any such reallocation of its labor forces. The parties further agree that such reallocation of labor forces by UPRR and any direct or indirect results of such reallocation will not constitute a breach of this agreement by UPRR.
4. The STATE Contractor shall conduct the WORK in a safe and orderly manner and according to the PLANS and specifications. The STATE Contractor shall at no times hinder the safe operation of UPRR facilities nor shall it allow the UPRR required insurance to lapse at any time. That if any STATE Contractor shall prosecute the PROJECT WORK in a manner that UPRR deems to be hazardous to its property, facilities or the safe and expeditious movement of its traffic, or the insurance described in the Right of Entry documents shall be canceled during the course of the PROJECT, then UPRR shall have the right to stop the WORK, within UPRR right of way, until the acts or omissions of such STATE Contractor have been fully rectified to the satisfaction of UPRR's Manager – Industry & Public Projects, or additional insurance has been delivered to and accepted by UPRR. Such work stoppage shall not give rise to or impose upon UPRR any liability to STATE. In the event that UPRR shall desire to stop work in UPRR right of way, UPRR agrees to give immediate notice thereof in writing to those individuals set forth in Article III paragraph 28.
5. During the construction of the PROJECT the STATE's Contractor will not deposit any material or debris onto UPRR property that, in the opinion of UPRR, would hinder railroad operation or be unsafe to railroad operations.
6. The STATE will reimburse UPRR in full for the actual cost of all RAILROAD WORK performed by UPRR pursuant to this agreement. All expenses incurred by UPRR and billed to STATE pursuant to Article I, paragraph 6, hereof, shall be in accordance with and subject to the terms and provisions of the Federal Highway Administration Manual, as amended or revised. STATE agrees to reimburse all of UPRR's preliminary engineering and contract

preparation costs as described in Article I, paragraph 3a, hereof, notwithstanding the fact that such work may have preceded the date of this agreement.

7. STATE will reimburse UPRR for the actual cost of RAILROAD WORK, subject to STATE's right to audit UPRR costs, including any changes approved by STATE. The estimated cost of the RAILROAD WORK is set forth in Exhibits A-1 through A-5. STATE is not responsible for any costs which are betterments or enhancements to UPRR's WORK. The parties agree that the items listed on Exhibits A-1 through A-5 (except for any items identified to be paid by UPRR and indicated in this paragraph) do not constitute betterments or enhancements within the meaning of this AGREEMENT.
8. The UPRR's Manager - Industry and Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission. That the construction of the PROJECT, on UPRR right of way, shall not be commenced until STATE's Contractor shall have given not less than thirty (30) working days prior written notice to UPRR's Manager - Industry and Public Projects, making reference to UPRR's file numbers 2231-90, which notice shall state the time that operations for construction of the PROJECT, on UPRR right of way, shall commence.
9. All utility crossings within the limits of the Highway Grant area will be covered by separate agreements between UPRR and each of the owners of the utilities. No highway drainage outfall points will discharge onto UPRR property, except as shown on the approved PLANS.
10. After completion of the construction of said PROJECT as herein described:
 - (a) UPRR will, at its sole cost and expense, maintain, repair, renew, and reconstruct its roadbed, track, and all other railroad facilities;
 - (b) STATE will own and, at its sole cost and expense, maintain, repair, renew, and reconstruct the two at grade crossings, frontage roads, lighting, roadway drainage facilities, irrigation lines and all appurtenances thereto;
11. The STATE shall have the right to maintain the at grade crossings and frontage roads, drainage facility crossings and irrigation line crossings. Before entering upon UPRR's right of way for maintenance purposes to maintain said crossings and frontage roads, by STATE personnel, State shall notify UPRR's Manager - Industry & Public Projects to obtain prior authorization. If work is contracted, STATE will require its prime Contractor(s) to comply with the obligations in favor of UPRR set forth in the Right of Entry documents issued by UPRR and as may be revised from time to time.
12. If State shall deem it necessary or desirable, in the future, due to traffic conditions, to alter or reconstruct the facilities herein contemplated, it shall have full right to do so, the cost of which shall be paid by the STATE. If however, such alteration or reconstruction shall encroach further upon UPRR's right of way to a greater extent than is contemplated by the PLANS and specifications for the PROJECT, the STATE shall submit revised plans for

review and approval to UPRR, and seek the execution of a supplement to this AGREEMENT or the completion of a separate agreement.

13. All the covenants and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, except that no party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
14. Nothing contained in this AGREEMENT shall be construed as obligating the STATE to undertake the actual construction of the PROJECT until such time as it deems appropriate. In the event that construction of the PROJECT has not begun for a period of two years from the date of this AGREEMENT, this AGREEMENT shall become null and void.
15. The acceptance date of this AGREEMENT shall be the day which the last party executes the AGREEMENT.
16. In the event conditions or circumstances require a change in the scope of UPRR's RAILROAD WORK on the PROJECT as set forth in this AGREEMENT and on the PROJECT PLANS, each party shall agree in writing to the changes, including payment responsibilities prior to doing the work. STATE shall not be responsible for any costs associated with any change in the scope of RAILROAD WORK until STATE approves the change in writing. The proposed schedule for completion of RAILROAD WORK shall be adjusted to accommodate the change in scope and the time necessary for STATE to process the change request.
17. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibits A-1 through A-5 plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to UPRR pending resolution.
18. UPRR shall reimburse STATE, within ninety (90) days of receiving written notification, which will include a copy of the Audit Report, for any amounts STATE disallows as a result of its audit. Any audit exceptions with which UPRR disagrees shall be paid to STATE, under protest, subject to resolution by STATE and UPRR through compromise, arbitration or adjudication as provided for in this AGREEMENT.
19. ADOT and the UPRR each agree to be liable to the other party for its own acts of negligence and the negligence of its own employees.
20. The parties shall use arbitration after exhausting applicable administrative remedies to resolve disputes arising out of this AGREEMENT where the sole relief sought is monetary damages of \$100,000 or less exclusive of interest and costs, as provided in A.R.S. § 12-1518.
21. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

22. UPRR shall comply with all applicable provisions of Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
23. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511: with the understanding, however, that STATE shall pay to UPRR within ninety (90) days, for all RAILROAD WORK completed or in progress up to the point of cancellation.
24. In accordance with A.R.S. § 35-214, all books accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five years after the receipt of final payment if the project is State Funded. If the PROJECT is Federally funded the time limit for inspection of UPRR records by the State shall be three years after receipt of the final invoice. The STATE shall notify UPRR on or before the advertisement date of the PROJECT which form of funding is utilized. At STATE's discretion said inspection and audit may be held at UPRR's office during normal business hours. STATE shall conduct its inspection and audit at its expense, including UPRR's audit costs.
25. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire agreement between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
26. This AGREEMENT shall be governed by the laws of the State of Arizona.
27. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
28. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

Union Pacific Railroad
Company:

Jim Smith
UPRR Manager – Industry & Public Projects
10031 Foothills Blvd.,
Roseville, CA 95747

State of Arizona

Arizona Department of Transportation
Utility & Railroad Section
Attn: Engineer – Manager
205 South 17th Avenue – Mail Drop 618E
Phoenix, Arizona 85007

29. Supporting documentation for reimbursement of RAILROAD WORK shall comply with 23CFR 140 Subpart I and shall be evaluated for reimbursement whenever supporting

documentation has either (i) the unique UPRR WORK ORDER NUMBER, (ii) the unique UPRR COST ACCUMULATION NUMBER, or (iii) UTILITY TRACS NO.: 085 MA 150 H5955 44U and AGREEMENT No. 2421-04-UPRR.

IN WITNESS WHEREOF, State has caused this Agreement to be executed and attested by its duly qualified and authorized officials, and UPRR has executed this Agreement, both as of the day and year first above written.

UNION PACIFIC RAILROAD COMPANY

ARIZONA DEPARTMENT OF TRANSPORTATION

By: [Signature]

VICTOR MENDEZ, DIRECTOR

Title: G. L. PINKER

[Signature]

Sam Maroufkhani
Deputy State Engineer

Its: Director-Contracts

Date 8/5/04

Date: 8/23/04

Recommended By: [Signature]
Bruce Vana

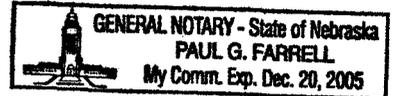
ACKNOWLEDGMENT BY UPRR

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23rd day of August, 2004, by Gregory L. Pinker, the Director-Contracts on behalf of the corporation.

My Commission Expires: 12/20/05

[Signature]
Notary Public



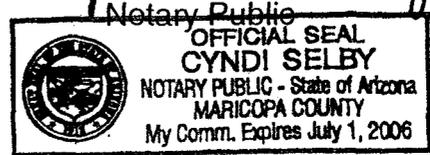
ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 5th day of August, 2004, by Sam Maroufkhani Deputy State Engineer, Arizona Department of Transportation.

My Commission Expires: 07/01/06

[Signature]
Notary Public



Summary Of Estimated Costs

SR 85 MP 150.41-MP 152.52
 UTILITY TRACS NUMBER 085 MA 150 H5955 44U
 SR 85 NB Frontage Rd RRMP 873.38 AAR/DOT # 741 769X
 SR 85 SB Frontage Rd RRMP 873.28 AAR/DOT # 922 558V
 Near Buckeye, AZ on the Phoenix Subdivision
 UPRR Folder No. 2231-90

RAILROAD WORK means the work to be performed by UPRR, at STATE's expense, which is described in the UPRR ESTIMATES. The RAILROAD WORK shall include any work performed by UPRR or its contractors and agents, including, without limitation, any pre-engineering, engineering, management, administration, design, review or preparation of plans and specifications, inspection and construction labor, materials and equipment as set forth in the AGREEMENT, including approved changes in scope. Work for flagging protection shall be billed directly to the STATE's Contractor who has applied for right of entry.

In addition to the RAILROAD WORK described above, the cost set forth in this **Exhibit A** includes the agreed cost to acquire the Highway Grant, attached as **Exhibit D**.

SUMMARY:

AMOUNT

| | |
|---|---|
| Exhibit A-1 Remove and replace track components to accommodate the STATE's open cut installation of Drainage Structure. | \$20,213 19583 (BV) |
| Acquire and place ballast material to stabilize trackbed | \$7,000 |
| Respond to potential failure of Drainage Facility | <u>\$50,000</u> |
| Sub-total for Open Cut | <u>\$77,213</u> |
| Exhibits A-2 and A-3 to construct, remove, adjust, and install new gates and signals and surface for the existing (RRMP 873.38 AAR/DOT # 741 769X) at grade crossing, to serve as the northbound Frontage Road at grade crossing serving SR 85. | \$235,424 233168 (BV) |
| Exhibits A-4 and A-5 construct, and install new gates and signals and surface for the at grade crossing, to serve as the southbound Frontage Road. | \$236,901 229381 (BV) |
| Exhibit D - Highway Grant | \$28,982 |
| Exhibit B - Temporary Construction Use Area Utility Easement | <u>\$ 2,500</u> |
| Total | <u>\$581,020</u> 570614 (BV) |

Total Estimated Project Costs = \$581,020 ~~570614~~ (BV)

EXHIBIT "A"

DATE: 2004-08-17

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:

LOCATION: GILA BEND, AZ/ SR-85/ PHOENIX SUB/ MP 873.33/STATE OF ARIZONA
INSTALL 80 T.F. OF TRACK INCLUDING 100% TIES RENEWAL AND BALLAST.
THE PROJECT IS 100% RECOLLECTABLE FROM AZ DOT WITH FEDERAL ADDITIVES

PID: 49115 AWO: 46373 MP, SUBDIV: 873.33, PHOENIX
SERVICE UNIT: 16 CITY: GILA BEND STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|------------------------------------|--------|------|--------------|-------------|--------------|------|--------------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 1000 | | 1000 | | 1000 |
| LABOR ADDITIVE 139% | | | 1390 | | 1390 | | 1390 |
| TOTAL ENGINEERING | | | 2390 | | 2390 | | 2390 |
| SIGNAL WORK | | | | | | | |
| MAIL STORE EXPENSE | | | | 1 | 1 | | 1 |
| SALES TAX | | | | 1 | 1 | | 1 |
| SIGNAL | | | 887 | 34 | 921 | | 921 |
| TOTAL SIGNAL | | | 887 | 36 | 923 | | 923 |
| TRACK & SURFACE WORK | | | | | | | |
| BALAST | 1.00 | CL | 527 | 595 | 1122 | | 1122 |
| LABOR ADDITIVE 139% | | | 5332 | | 5332 | | 5332 |
| MAIL STORE EXPENSE | | | | 84 | 84 | | 84 |
| OTM | | | 469 | 1555 | 2024 | | 2024 |
| RAIL | 160.00 | LF | 117 | 1571 | 1688 | | 1688 |
| SALES TAX | | | | 222 | 222 | | 222 |
| TRACK-INSTAL | | | 2822 | | 2822 | | 2822 |
| TRK-SURF, LIN | | | 974 | | 974 | | 974 |
| XTIE | 50.00 | EA | 127 | 1875 | 2002 | | 2002 |
| TOTAL TRACK & SURFACE | | | 10368 | 5902 | 16270 | | 16270 |
| LABOR/MATERIAL EXPENSE | | | 13645 | 5938 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 19583 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 19583 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| RECOLLECTIBLE LESS CREDITS | | | | | | | |

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT A-1

Agreement No. 2421-04-UPRR
UPRR Folder No. 2231-90

DATE: 2004-08-17

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:
INSTALL 1-48FT CONCRETE CROSSING SURFACE AT NORTH BOUND FRONTAGE ROAD,
MP 873.38 IN BUCKEYE, AZ. ON THE PHOENIX SUBDIVISION.
UNLOAD 1 CAR OF BALLAST AT CROSSING AND SURFACE THROUGH.
RAILROAD TO PERFORM ALL WORK - COST DISTRIBUTED AS FOLLOWS:
SURFACE - STATE OF ARIZONA 100% RECOLLECTABLE

PID: 45030 AWO: MP, SUBDIV: 873.38, PHOENIX
SERVICE UNIT: 14 CITY: BUCKEYE STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|---|--------|------|--------------|--------------|--------------|------|--------------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 1000 | | 1000 | | 1000 |
| LABOR ADDITIVE 157% | | | 1570 | | 1570 | | 1570 |
| TOTAL ENGINEERING | | | 2570 | | 2570 | | 2570 |
| SIGNAL WORK | | | | | | | |
| MATL STORE EXPENSE | | | | 2 | 2 | | 2 |
| SALES TAX | | | | 1 | 1 | | 1 |
| SIGNAL | | | 887 | 42 | 929 | | 929 |
| TOTAL SIGNAL | | | 887 | 45 | 932 | | 932 |
| TRACK & SURFACE WORK | | | | | | | |
| ASPHALT REQUIRED | | | | 10000 | 10000 | | 10000 |
| BALAST | 1.00 | CL | 2110 | 595 | 2705 | | 2705 |
| FIELD WELD | | | 80 | | 80 | | 80 |
| LABOR ADDITIVE 104% | | | 20600 | | 20600 | | 20600 |
| MATL STORE EXPENSE | | | | 320 | 320 | | 320 |
| OTM | | | 1822 | 1387 | 3209 | | 3209 |
| RAIL | 160.00 | LF | 872 | 1723 | 2595 | | 2595 |
| ROCKING | 48.00 | TF | 3804 | 5254 | 9058 | | 9058 |
| SALES TAX | | | | 587 | 587 | | 587 |
| SAW CUT STREET APPROACH | | | | 1200 | 1200 | | 1200 |
| TRAFFIC CONTROL | | | | 10000 | 10000 | | 10000 |
| TRK-SURF, LIN | | | 2338 | | 2338 | | 2338 |
| WELD | | | 2589 | 259 | 2848 | | 2848 |
| XTIE | 100.00 | EA | 10475 | 5519 | 15994 | | 15994 |
| TOTAL TRACK & SURFACE | | | 44690 | 36844 | 81534 | | 81534 |
| LABOR/MATERIAL EXPENSE | | | 48147 | 36889 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 85036 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 85036 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |

RECOLLECTIBLE LESS CREDITS

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT A-2, 1 of 2

Agreement No. 2421-04-UPRR
UPRR Folder No. 2231-90

SR 85 Existing Crossing. 1/2

DATE: 2004-08-17

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:

RELOCATE EXISTING FL SIGNALS W/GATES, ADD CRT IN NEW CABIN, AND UPGRADE
FL SIGNALS TO LED AT NO. FRONTAGE ROAD IN BUCKEYE, AZ. M.P. 873.38
SIGNAL PROJECT MANAGER: LEE BURDEN 935-7680
RAILROAD TO PERFORM ALL WORK / COST DISTRIBUTED AS FOLLOWS:
SIGNAL - STATE OF ARIZONA 100% RECOLLECTIBLE

PID: 44200 AFO: 08606 MP, SUBDIV: 873.38, PHOENIX
SERVICE UNIT: 16 CITY: BUCKEYE STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|------------------------------------|-----|------|--------------|--------------|---------------|----------|---------------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 1211 | | 1211 | | 1211 |
| LABOR ADDITIVE 103.45% | | | 5613 | | 5613 | | 5613 |
| SIG-HWY XNG | | | 4215 | | 4215 | | 4215 |
| TOTAL ENGINEERING | | | 11039 | | 11039 | | 11039 |
| SIGNAL WORK | | | | | | | |
| BILL PREP | | | 900 | | 900 | | 900 |
| CONTRACT | | | | 4228 | 4228 | | 4228 |
| FOREIGN LINE FREIGHT | | | | 846 | 846 | | 846 |
| LABOR ADDITIVE 103.45% | | | 27355 | | 27355 | | 27355 |
| MATL STORE EXPENSE | | | | 2114 | 2114 | | 2114 |
| PERSONAL EXPENSES | | | | 20550 | 20550 | | 20550 |
| SALES TAX | | | | 2368 | 2368 | | 2368 |
| SIGNAL | | | 26442 | 42286 | 68728 | | 68728 |
| TRANSPORTATION CHARGES | | | | 4127 | 4127 | | 4127 |
| WZ TRAFFIC CONTROL | | | | 5877 | 5877 | | 5877 |
| TOTAL SIGNAL | | | 54697 | 82396 | 137093 | | 137093 |
| LABOR/MATERIAL EXPENSE | | | 65736 | 82396 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 148132 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 148132 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| RECOLLECTIBLE LESS CREDITS | | | | | | | |

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT A-2, 2 of 2

can see existing crossing 2/2

DATE: 2004-08-17

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:
INSTALL 1-48FT CONCRETE CROSSING SURFACE AT SOUTH BOUND FRONTAGE ROAD,
MP 873.28 IN BUCKEYE, AZ. ON THE PHOENIX SUBDIVISION.
UNLOAD 1 CAR OF BALLAST AT CROSSING AND SURFACE THROUGH.
RAILROAD TO PERFORM ALL WORK - COST DISTRIBUTED AS FOLLOWS:
SUREFACE - STATE OF ARIZONA 100% RECOLLECTABLE

PID: 45023 AFO: MP,SUBDIV: 873.28, PHOENIX
SERVICE UNIT: 14 CITY: BUCKEYE STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|------------------------------------|--------|------|--------------|--------------|--------------|----------|--------------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 1000 | | 1000 | | 1000 |
| LABOR ADDITIVE 15% | | | 1570 | | 1570 | | 1570 |
| TOTAL ENGINEERING | | | 2570 | | 2570 | | 2570 |
| SIGNAL WORK | | | | | | | |
| MATL STORE EXPENSE | | | | 2 | 2 | | 2 |
| SALES TAX | | | | 1 | 1 | | 1 |
| SIGNAL | 887 | | 42 | | 929 | | 929 |
| TOTAL SIGNAL | | | 887 | 45 | 932 | | 932 |
| TRACK & SURFACE WORK | | | | | | | |
| ASPHALT REQUIRED | | | | 1000 | 1000 | | 1000 |
| BALAST | 1.00 | CL | 2110 | 595 | 2705 | | 2705 |
| LABOR ADDITIVE 104% | | | 16719 | | 16719 | | 16719 |
| MATL STORE EXPENSE | | | | 295 | 295 | | 295 |
| OTM | | | 1488 | 1048 | 2536 | | 2536 |
| RAIL | 160.00 | LF | 971 | 1723 | 2694 | | 2694 |
| RDKING | 48.00 | TF | 2997 | 5334 | 8331 | | 8331 |
| SALES TAX | | | | 559 | 559 | | 559 |
| TRK-SURF,LIN | | | 2338 | | 2338 | | 2338 |
| XTIE | 98.00 | EA | 9378 | 5373 | 14751 | | 14751 |
| TOTAL TRACK & SURFACE | | | 36001 | 15927 | 51928 | | 51928 |
| LABOR/MATERIAL EXPENSE | | | 39458 | 15972 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 55430 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 55430 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |

RECOLLECTIBLE LESS CREDITS

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT A-4, 1 of 2

Agreement No. 2421-04-UPRR
UPRR Folder No. 2231-90

SR 85 New crossing 1/2

DATE: 2004-08-17

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

DESCRIPTION OF WORK:
INSTALL LED FL SIGNALS W/GATES, CRT CIRCUITRY, NEW CABIN, JUNCTION BOXES
AND RELOCATE POLE LINE AT SO. FRONTAGE ROAD IN BUCKEYE, AZ. M.P. 873.28
SIGNAL PROJECT MANAGER: LEE BURDEN 935-7680
RAILROAD TO PERFORM ALL WORK / COST DISTRIBUTED AS FOLLOWS:
SIGNAL - STATE OF ARIZONA 100% RECOLLECTIBLE

PID: 44201 AWO: 08607 MP,SUBDIV: 873.28, PHOENIX
SERVICE UNIT: 16 CITY: BUCKEYE STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|------------------------------------|-----|-------|-------|----------|--------|------|--------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 1211 | | 1211 | | 1211 |
| LABOR ADDITIVE 103.45% | | | 5613 | | 5613 | | 5613 |
| SIG-HWY XNG | | | 4215 | | 4215 | | 4215 |
| TOTAL ENGINEERING | | | 11039 | | 11039 | | 11039 |
| SIGNAL WORK | | | | | | | |
| BILL PREP | | 900 | | | 900 | | 900 |
| CONTRACT | | | | 5193 | 5193 | | 5193 |
| EARTH FILL/ROCK | | | | 1500 | 1500 | | 1500 |
| FOREIGN LINE FREIGHT | | | | 1039 | 1039 | | 1039 |
| LABOR ADDITIVE 103.45% | | 28365 | | | 28365 | | 28365 |
| MATL STORE EXPENSE | | | | 2579 | 2579 | | 2579 |
| METER SERVICE | | | | 10000 | 10000 | | 10000 |
| PERSONAL EXPENSES | | | | 21375 | 21375 | | 21375 |
| SALES TAX | | | | 2908 | 2908 | | 2908 |
| SIGNAL | | 27418 | | 51931 | 79349 | | 79349 |
| TRANSPORTATION CHARGES | | | | 4127 | 4127 | | 4127 |
| WZ TRAFFIC CONTROL | | | | 5577 | 5577 | | 5577 |
| TOTAL SIGNAL | | | 56683 | 106229 | 162912 | | 162912 |
| LABOR/MATERIAL EXPENSE | | | 67722 | 106229 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 173951 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 173951 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| RECOLLECTIBLE LESS CREDITS | | | | | | | |

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT A-4 2 of 2

Agreement No. 2421-04-UPRR
UPRR Folder No. 2231-90

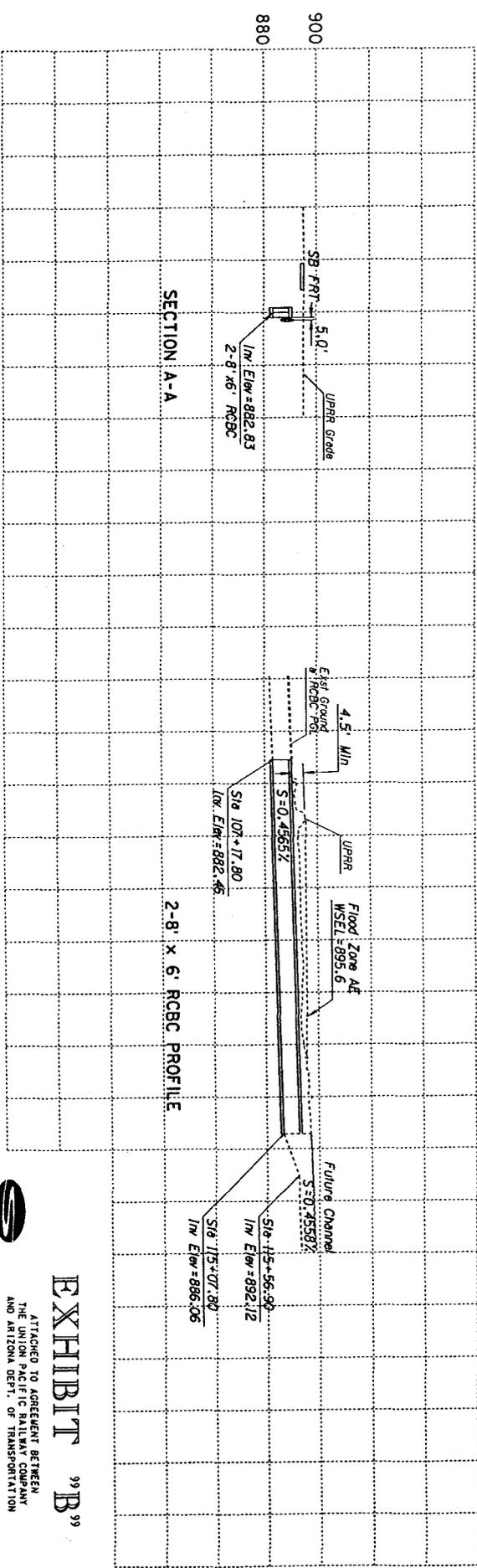
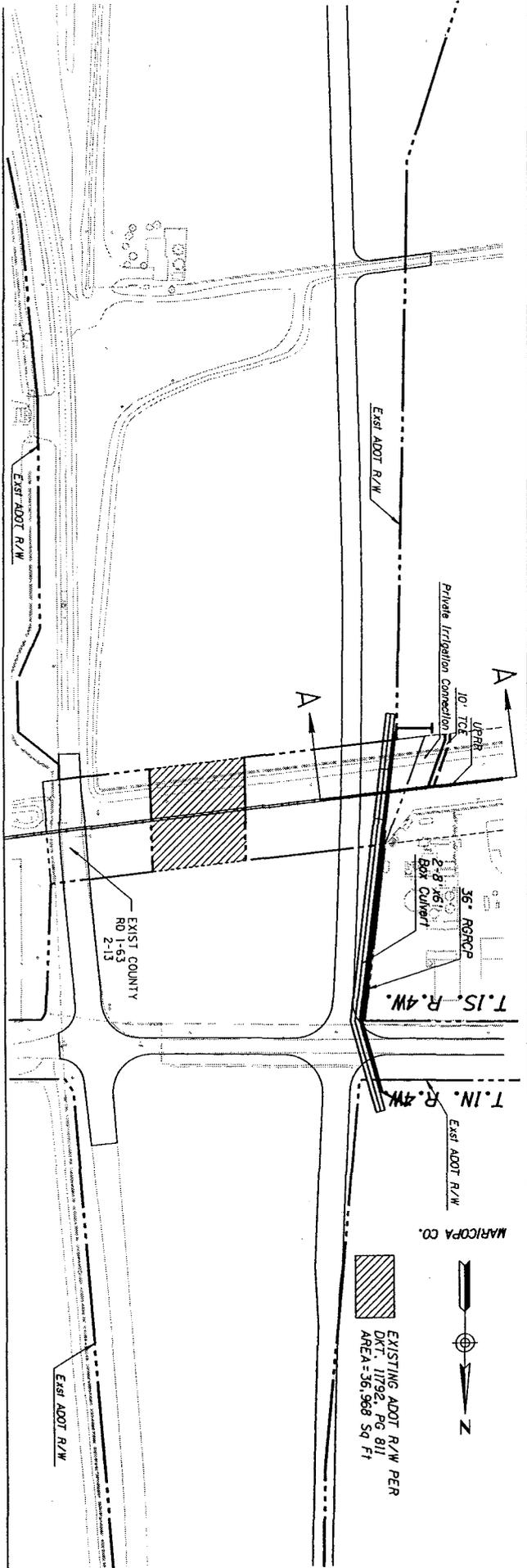
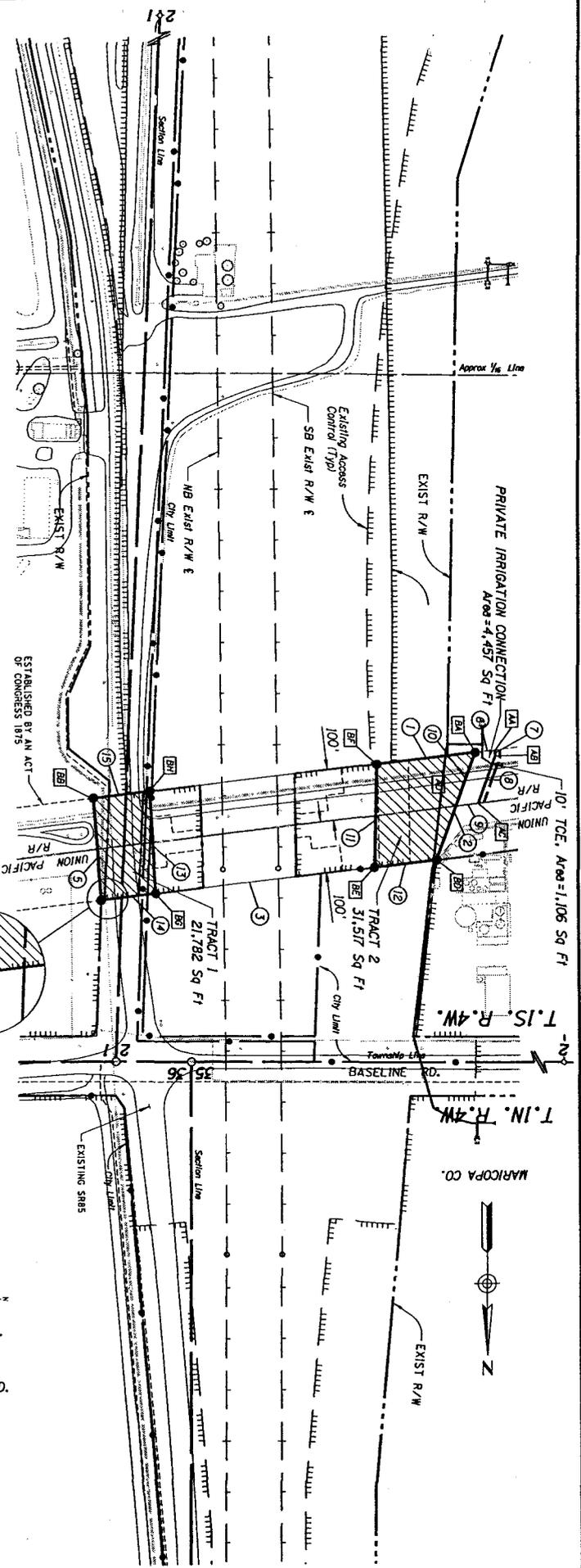


EXHIBIT B⁹⁹

ATTACHED TO AGREEMENT BETWEEN
 THE UNION PACIFIC RAILWAY COMPANY
 AND ARIZONA DEPT. OF TRANSPORTATION

Stanley Consultants INC

FILENAME: g:\15539\stg\stg-f-way\UPRR\06-23-04\exhibit B.dgn



- NOTES:
1. TO REVIEW REFERENCES TO SECTION CORNER, ADJUSTERS AND ADJUSTMENTS TO BE MADE IN ADOT RIGHT OF WAY PLANS SECTION. PROJECT S 065 B-702 ON FILE IN ADOT RIGHT OF WAY PLANS SECTION.
 2. TO LOCATE ALIGNMENT FOR SB 85 CONSTRUCTION CENTERLINE, SEE SAID ADOT ROW PLANS.



DATA TABLE

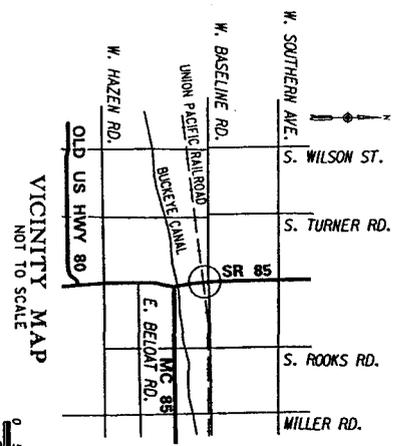
| | | |
|----|-------------|--------|
| 1 | S83°33'02"W | 194.28 |
| 2 | N20°24'40"E | 224.18 |
| 3 | N83°33'02"E | 429.07 |
| 4 | N83°33'02"E | 40.50 |
| 5 | S04°16'13"E | 200.14 |
| 6 | S83°33'02"W | 40.31 |
| 7 | N00°41'40"E | 11.96 |
| 8 | N20°24'40"E | 98.79 |
| 9 | N83°33'02"E | 44.84 |
| 10 | S20°24'40"W | 112.09 |
| 11 | S01°28'17"W | 201.93 |
| 12 | N83°33'02"E | 120.81 |
| 13 | N03°01'58"W | 200.36 |
| 14 | N83°33'02"E | 66.25 |
| 15 | S83°33'02"W | 111.08 |

NB EXIST R/W & OFFSET

| PT. | STATION | OFFSET |
|-----|-------------------|-----------|
| AA | P.O.T. 7370+17.89 | 533.28 LT |
| AB | P.O.T. 7370+29.85 | 533.00 LT |
| AC | P.O.T. 7371+22.06 | 497.57 LT |
| AD | P.O.T. 7371+26.62 | 452.96 LT |
| BA | P.O.T. 7370+21.99 | 493.17 LT |
| BB | P.O.T. 7370+98.33 | 253.25 RT |
| BC | P.O.C. 7372+98.35 | 240.44 RT |
| BD | P.O.T. 7372+31.26 | 412.75 LT |
| BE | P.O.C. 7372+43.54 | 292.57 LT |
| BF | P.O.T. 7370+41.76 | 299.90 LT |
| BG | P.O.C. 7372+87.34 | 134.26 RT |
| BH | P.O.T. 7370+87.03 | 142.75 RT |

EXHIBIT B 99

ATTACHED TO AGREEMENT BETWEEN THE UNION PACIFIC RAILWAY COMPANY AND ARIZONA DEPT. OF TRANSPORTATION



DESCRIPTION FOR RIGHT OF WAY

TRACT 1:

That portion of Lot 4 of Section 1 and Lot 1 of Section 2, Township 1 South, Range 4 West, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a 2 inch cap on a ½ inch rebar marking the common North corner of said Sections 1 and 2, being South 89°31'57" East 147.99 feet from an Arizona Department of Transportation brass cap in a hand hole marking the Southwest corner of Section 36, Township 1 North, Range 4 West, Gila and Salt River Meridian;

thence along the Section line common to said Sections 1 and 2, South 02°33'17" West 321.90 feet to the POINT OF BEGINNING on the existing northerly line of the 200.00 foot wide right of way of the Union Pacific Railroad Company;

thence along said existing northerly railroad right of way line, South 83°33'02" West 66.25 feet;

thence South 03°01'58" East 200.36 feet to the existing southerly line of said railroad right of way;

thence along said existing southerly railroad right of way line, North 83°33'02" East 111.08 feet;

thence North 04°16'13" West 200.14 feet to said existing northerly railroad right of way line;

thence along said northerly railroad right of way line South 83°33'02" West 40.50 feet to the POINT OF BEGINNING.

There shall be no right or easement of access to the limited access highway to be constructed over and upon the right of way described above.

(continued)

PAGE 1

EXHIBIT "C"

PROJECT: S 085-B-702

SECTION: Gila River -Jct. I-10

PARCEL: 7-09776

085 MA 147 H5675 03R

jd 06/11/04

TRACT 2:

That portion of Lot 1 of Section 2, Township 1 South, Range 4 West, Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at a 2 inch cap on a ½ inch rebar marking the Northeast corner of said Section 2, being South 89°31'57" East 147.99 feet from an Arizona Department of Transportation brass cap in a hand hole marking the Southwest corner of Section 36, Township 1 North, Range 4 West, Gila and Salt River Meridian;

thence along the East line of said Section 2, South 02°33'17" West 321.90 feet to the existing northerly line of the 200.00 foot wide right of way of the Union Pacific Railroad Company;

thence along said existing northerly railroad right of way line, South 83°33'02" West 495.32 feet to the POINT OF BEGINNING;

thence continuing along said existing northerly railroad right of way line, South 83°33'02" West 120.81 feet;

thence South 20°24'40" West 224.18 feet to the existing southerly line of said railroad right of way;

thence along said existing southerly line of the railroad right of way, North 83°33'02" East 194.28 feet;

thence North 01°28'17" East 201.93 feet to the POINT OF BEGINNING.

There shall be no right or easement of access to the limited access highway to be constructed over and upon the right of way described above.

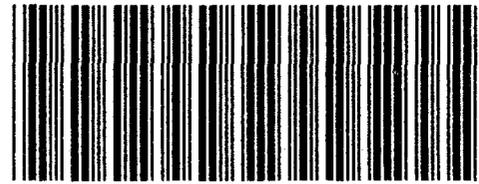
PAGE 2

EXHIBIT "C"

PROJECT: S 085-B-702
085 MA 147 H5675 03R

SECTION: Gila River -Jct. I-10

PARCEL: 7-09776
jd 06/11/04



OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2004-1071078 09/14/04 11:16
 1 OF 1

HENSLEYE

After Recording, Return To:

ARIZONA DEPARTMENT OF TRANSPORTATION
 ATTENTION: PAULA GIBSON, MD 612E, Proj. Mgmt. Section
 205 S. 17th Avenue
 Phoenix, AZ 85007

Space Above This Line for County Recorder's Use

ADOT Utility Project No. STP 085-B(013)
 ADOT Agreement No. 2421-04-UPRR
 Highway Gila Bend-Buckeye Highway
 Location SR85-ADOT Milepost 150.41-MP 151.0
 UPRR Milepost 873.38

ADOT PARCEL 7-09776
 Project: S 085-B-702
 085MA147H567503R
 Gila River - Jct. I-10

HIGHWAY GRANT

THIS INSTRUMENT is made this 23rd day of August, 2004, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly known as Southern Pacific Transportation Company, a Delaware corporation (the "Grantor") and the STATE OF ARIZONA, acting by and through its Department of Transportation (the "Grantee"):

1. Grantor, for and in consideration of the sum of Twenty Eight Thousand Nine Hundred Eighty Two Dollars (\$28,982.00) and in consideration of the mutual covenants contained herein, hereby grants to Grantee, its successors and assigns, subject to the conditions herein contained, the right (i) construct, use, maintain, repair, renew and reconstruct an at-grade public highway road crossing and frontage road along and over the portion of Grantor's property described as Tract 1 in **Exhibit A**, attached hereto and hereby made a part hereof and (ii) construct, use, maintain, repair, renew and reconstruct the at-grade crossing and frontage road, roadway drainage box culvert and irrigation pipe along and over the portion of Grantor's property described as Tract 2 in **Exhibit A**, with such property hereinafter collectively referred to as the "Property" and being located near Grantor's Milepost 873 near the Town of Buckeye, Maricopa County, Arizona.

2. This grant is subject to (i) the terms and conditions of the separate agreement between the Grantor and Grantee dated 8/23, 2004, covering Grantee's Utility

Project Number STP 085-B (013) and (ii) all prior and outstanding licenses, leases, easements, restrictions, conditions, covenants, liens and claims of title which may affect the Property, whether recorded or unrecorded, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. This grant is made subject to the prior and continuing right and obligation of Grantor, its successors and assigns, to use all the Property in the performance of its duty as a common carrier, and there is reserved unto Grantor, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain, repair, use and operate existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along the Property. Grantor may move equipment of all types on, along and over the grant area.

4. If the Property, or any portion thereof, shall cease to be needed for public highway purposes, then and in that event, the rights herein granted shall, as to such portion(s), thereupon cease and terminate and Grantor, its successors and assigns, shall resume possession thereof of such portion(s) of the Property. In such circumstances, the Grantee, if so requested by Grantor, shall execute and deliver to Grantor a quitclaim and release document in recordable form that releases the grant of rights contained herein.

IN WITNESS WHEREOF, the Grantor and Grantee have each duly executed this instrument as of the date first herein written.

Attest:

B. Kubat
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,
By *[Signature]*
Title: Director-Contracts

(Seal)

Accepted

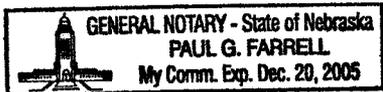
STATE OF ARIZONA,
DEPARTMENT OF TRANSPORTATION,
By *[Signature]*
Title: ENB-MN62 U&RR

ACKNOWLEDGEMENT

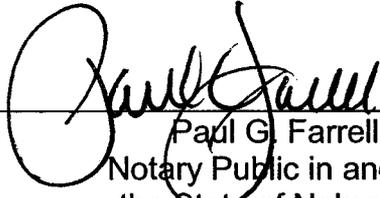
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

On this 23rd day of August, 2004, before me *Paul G. Farrell*, a Notary Public in and for said County and State personally appeared, *Gregory L. Pinker* and *Beberly J. Kubat* who are the *Director Contracts* and *Assistant Secretary*, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and by their signatures on the instrument the persons, or the entity upon behalf of which persons acted, executed the instrument.

WITNESS my hand an official seal.



(Seal)



Paul G. Farrell
Notary Public in and for
the State of Nebraska

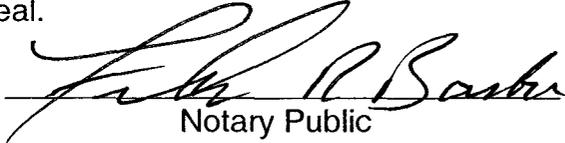
My Commission Expires: December 20, 2005

ACKNOWLEDGMENT

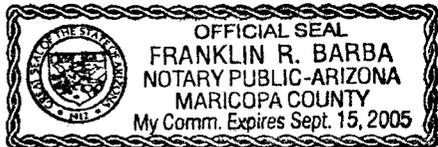
STATE OF ARIZONA)
) ss.
COUNTY OF Maricopa)

On this 6th day of August, 2004, before me, a Notary Public in and for said County and State, personally appeared Bruce Vana who is the Engineer-Manager U&RR of the State of Arizona, Department of Transportation, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public

(Seal)



DESCRIPTION FOR RIGHT OF WAY

TRACT 1:

That portion of Lot 4 of Section 1 and Lot 1 of Section 2, Township 1 South, Range 4 West, Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

Commencing at a 2 inch cap on a ½ inch rebar marking the common North corner of said Sections 1 and 2, being South 89°31'57" East 147.99 feet from an Arizona Department of Transportation brass cap in a hand hole marking the Southwest corner of Section 36, Township 1 North, Range 4 West, Gila and Salt River Meridian;

thence along the Section line common to said Sections 1 and 2, South 02°33'17" West 321.90 feet to the POINT OF BEGINNING on the existing northerly line of the 200.00 foot wide right of way of the Union Pacific Railroad Company;

thence along said existing northerly railroad right of way line, South 83°33'02" West 66.25 feet;

thence South 03°01'58" East 200.36 feet to the existing southerly line of said railroad right of way;

thence along said existing southerly railroad right of way line, North 83°33'02" East 111.08 feet;

thence North 04°16'13" West 200.14 feet to said existing northerly railroad right of way line;

thence along said northerly railroad right of way line South 83°33'02" West 40.50 feet to the POINT OF BEGINNING.

There shall be no right or easement of access to the limited access highway to be constructed over and upon the right of way described above.

(continued)

PAGE 1

TRACT 2:

That portion of Lot 1 of Section 2, Township 1 South, Range 4 West, Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at a 2 inch cap on a ½ inch rebar marking the Northeast corner of said Section 2, being South 89°31'57" East 147.99 feet from an Arizona Department of Transportation brass cap in a hand hole marking the Southwest corner of Section 36, Township 1 North, Range 4 West, Gila and Salt River Meridian;

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thence along said existing northerly railroad right of way line, South 83°33'02" West 495.32 feet to the POINT OF BEGINNING;

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PAGE 2