

NEW APPLICATION



City of Kingman

310 NORTH FOURTH STREET • KINGMAN • ARIZONA • 86401 • 928 • 753-5561
www.ci.kingman.az.us

June 13, 2005

ORIGINAL

Arizona Corporation Commission
Railroad Safety Section
400 West Congress, Suite 218
Tucson, Arizona 85701

Arizona Corporation Commission
DOCKETED

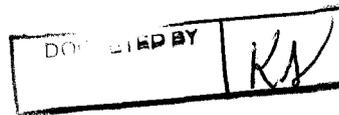
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AZ CORP COMMISSION
DOCUMENT CONTROL

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RECEIVED

Attn: Mr. Don Thompson



Re: Airway Avenue Railroad Crossing
Kingman, Arizona
Project No. 05-ID-00152

RR-02635B-05-0442

Dear Mr. Thompson:

Several years ago the City of Kingman identified the need to provide another crossing of the Burlington Northern Santa Fe (BNSF) Railway tracks along the Airway Avenue corridor. This need was further emphasized by a recently completed update to the Kingman Area Transportation Plan. This crossing will provide improved access to rapidly growing portions of the City, especially the area north of Interstate 40. The area is presently accessed by an at-grade crossing at Louise Avenue, which is 2 miles south of Airway Avenue, and an overpass at Hualapai Mountain Road, another ½ mile south of Louise Avenue. The BNSF Railway is operating 70 to 100 trains per day on their transcontinental main route.

The project will construct a new arterial roadway to extend Airway Avenue from Andy Devine Avenue to Castle Rock Road, approximately 3,450 linear feet. A 4-span 142 linear foot 3-track railroad bridge will be constructed to provide a roadway underpass for the alignment. The work will include the 5-lane roadway with bike lanes, curb, gutter and sidewalks, the construction and removal of 2,730 linear feet of dual-track railroad shoo-fly, storm drain facilities including 2,600 linear feet of 18-inch, 24-inch, 30-inch, 36-inch and 48-inch RGRCP, storm water pump station with control building, 2,500 linear feet of concrete-lined channel including 125 linear feet of 5-10'x6' RCBC and 100 linear feet of 10'x3' RCBC, 1,300 linear feet of 15-inch sewer main, 1,500 linear feet of 12-inch water main, street lights, and signing and pavement marking.

The Notice to Proceed is scheduled to be given to the contractor, Technology Construction, Inc., and BNSF Railway in August or September, 2005. Construction is expected to be completed by May, 2006. Once the Airway Avenue underpass is opened to traffic, the at-grade crossing at Louise Avenue will be closed.

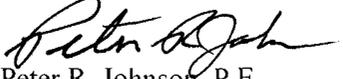
We are hereby requesting the necessary reviews and approvals by the Arizona Corporation Commission to allow the project to proceed. Enclosed, for your use, are 10 copies of the Construction and Maintenance Agreement between the BNSF Railway Co. and the City of Kingman, along with exhibits.

June 13, 2005

Arizona Corporation Commission
Page 2

If you have any questions or need additional information, please call me at (928) 753-8122

Sincerely,



Peter R. Johnson, P.E.
City Engineer

C: Colleen Deines, Manager Public Projects, BNSF Railway Co.
Jim Hubbard, P.E., Stantec Consulting Inc.
Paul Beecher, City Manager
Coral Loyd, Director Financial Services
Robert Taylor, City Attorney
file

UNDERPASS AGREEMENT

LAW DEPARTMENT APPROVED

BNSF File No. 025634T
Airway Avenue Underpass
Kingman, Arizona
U.S. D.O.T. No. 025634T

This Agreement ("**Agreement**"), is executed to be effective as of this 6th day of June, 2005 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the CITY OF KINGMAN, a political subdivision of the State of Arizona ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Kingman, State of Arizona;

WHEREAS, Agency desires to construct a new crossing at separated grades to be known as the Airway Avenue Underpass and designated as D.O.T. No. 025634T; and

WHEREAS, The existing Louise Avenue, D.O.T. No. 025241K at-grade crossing will be closed and removed upon completion of construction and the placing in service of said underpass;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed Airway Avenue Underpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. Temporary controls during construction must be in compliance with Section 8A-5, "Traffic Controls During Construction and Maintenance" of the Uniform Traffic Control Devices Manual, U.S. Department of Transportation.

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. In consideration of the faithful performance of the Agency's covenants contained herein, BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with the Agency's use of the Structure;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's use of the Structure.

Prior to commencing any work on BNSF's property or right-of-way, Agency must pay BNSF the sum of **Twenty Seven Thousand and No/100 Dollars (\$27,000)** as compensation for the Temporary Construction License. The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) sixty (60) days following substantial completion of the Structure, or (ii) twelve (12) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Structure only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon receiving the payment from Agency described in the subsequent sentence and provided Agency is in compliance with the terms and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. Agency must pay BNSF the sum of **Forty Three Thousand and Four Hundred and No/100 Dollars (\$43,400)** as compensation for the Easement within thirty (30) days of issuing a Notice to Proceed pursuant to Article III, Section 16 of this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the Project as set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;

- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Placement of initial six inches of crushed rock ballast on all track roadbeds for the shooflies and for the permanent replacement of the main tracks;
- (g) Construction and removal of Shoofly tracks for two main tracks including the lining over and lining back of portions of the existing main tracks;
- (g) Construction of underpass Structure, not to include excavation of Structure;
- (h) Placement of a waterproof membrane on the deck of the Structure, and after the placement of such waterproofing membrane, placement of a layer of crushed rock ballast (not to exceed six (6) inches in thickness) on the deck of the Structure;
- (i) Removal of the existing Louise Avenue at-grade crossing, including removal of the automatic warning devices, and obliteration of the crossing between the rails and two feet outside thereof.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past our credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

ARTICLE III – AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in

English Units, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.

3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.

4. Agency must acquire all rights of way necessary for the construction of the Project.

5. Agency must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

6. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) All necessary earthwork to provide embankment for shooflies and placement of 12 inches of sub ballast;
- (b) Excavation of the underpass Structure;
- (c) Placement of concrete collars, retaining walls, and crossing bracing on the interior bents;
- (d) Removal of shoofly embankment if BNSF deems embankment provides unsuitable drainage;
- (e) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (f) Provide suitable drainage, both temporary and permanent;
- (i) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

7. Agency must apply and maintain said D.O.T. Crossing number 025634T in a conspicuous location on the Structure.

8. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

9. In order to prevent damage to BNSF trains and property, Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its

contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

10. Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring or cribbing used by Agency's contractor shall comply with BNSF Bridge Requirements set forth on Exhibit F attached to this Agreement and incorporated herein. Additionally, the shoring and cribbing must comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

11. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Engineering Representative (505-767-6826) and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative (505-767-6826) to stop construction at no cost to the Agency or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**
- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

12. Agency must incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III, Sections 8, 9, 10, 11, and 13; (ii) the

provisions set forth in Article IV, Sections 3, 4, 10 and 11; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

13. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations will be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above.
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative (505-767-6826) four (4) weeks' advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (f) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F.

14. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

15. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS

CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR THE EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR THE EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

16. Agency must give BNSF's Manager of Public Projects written notice to proceed with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

17. Agency must perform all necessary work to obtain the permanent closure and vacation of Louise Avenue across BNSF's right-of-way upon completion of construction and the placing in service of Airway Avenue Underpass. BNSF will cooperate with Agency to achieve the closure and vacation of Louise Avenue and will remove the crossing surface within its right-of-way.

18. (INTENTIONALLY LEFT BLANK)

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF. Agency will not be in breach due to any delay caused by BNSF delay.

4. BNSF will have the right to stop construction work on the Project if any of the following events

take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Peter Johnson, Engineer
City of Kingman
310 N. 4th Street
Kingman, AZ 86401

5. Agency must supervise and inspect the operations of all Agency contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify 928-753-8122 for appropriate corrective action.

6. BNSF will contribute five (5) percent (hereinafter referred to as "BNSF's Share") towards the total actual costs of the Project. BNSF's Share will be based on the costs for preliminary engineering, right-of-way and construction within the following limits;

- (a) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the appropriate state highway agency; and
- (b) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in 23 CFR 646.210(c)(1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.

Additionally, local, state and federal funds will be used in the construction of the Project. The total actual cost of construction for the Project is presently estimated to be \$4,561,464.24, more particularly described (together with BNSF's Share) on Exhibit G attached hereto and incorporated herein.

7. Pursuant to this section and Article II, Section 6 herein, Agency must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

8. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design,

and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

9. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 025634T and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

- (a) BNSF will, at its sole cost and expense, accept, own, and maintain its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, and all other railroad facilities.
- (b) Agency will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).
- (c) Agency and BNSF shall perform the necessary work to obtain the permanent closure of Louise Avenue. Such closure shall be upon completion of construction and the placing in service of Airway Avenue Underpass grade separation. In consideration for Agency's agreement to close and vacate Louise Avenue, BNSF hereby agrees to cooperate with Agency in the future construction of an additional grade separated crossing.
- (d) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.
- (e) Agency must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
- (f) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (g) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (h) Agency must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- (i) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level

horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work to the superstructure of the Structure, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage:

Railroad Protective Liability insurance naming only the *Railroad* as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the *Railroad* prior to performing any work or services under this Agreement

As used in this paragraph, "*Railroad*" means "Burlington Northern Santa Fe Corporation", "The BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

12. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

13. Agency must provide one set of as built plans (prepared in English Units) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

14. Subject to the restrictions imposed by Article IV, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for maintenance purposes. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

15. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and Agency in such shares as may be mutually agreed to by the parties hereto.

16. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

17. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Arizona and the Federal Highway Administration, for a period of one (1) year from the date of final BNSF invoice under this Agreement.

18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

19. In the event construction of the Project does not commence within twelve months of the Effective Date, this Agreement will become null and void.

20. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway

BNSF's Manager of Public Projects
740 E Carnegie Drive
San Bernardino, CA 92408

Agency:

CITY OF KINGMAN - ENGR.
310 N. 4th Street
Kingman, AZ 86401

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

THE BNSF RAILWAY COMPANY

By: Gregory C Fox
Printed Name: Gregory C. Fox
Title: VP ENGINEERING

WITNESS:

AGENCY

CITY OF KINGMAN

By: Monica Gates
Printed Name: Monica Gates
Title: Mayor

WITNESS:

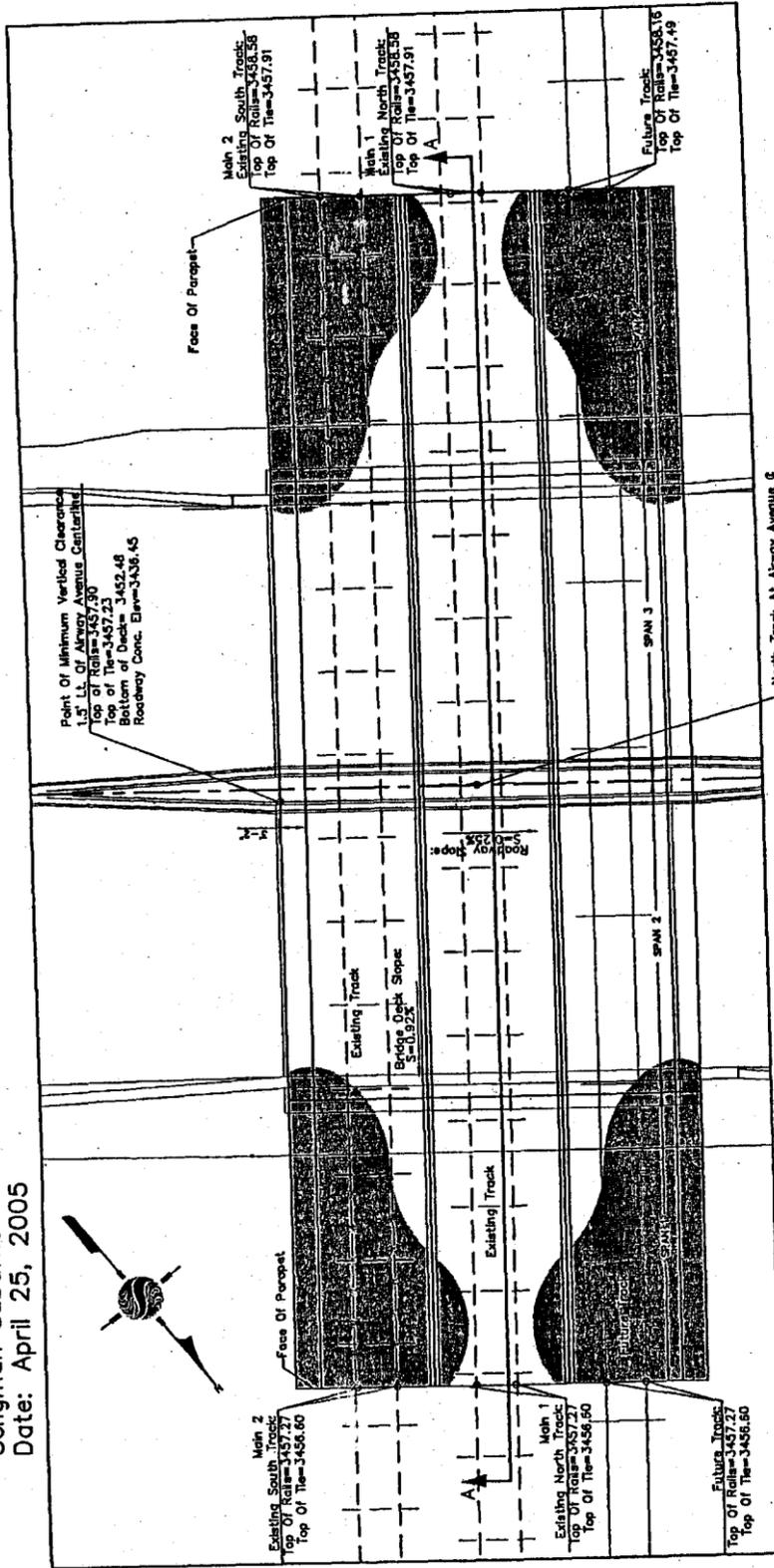
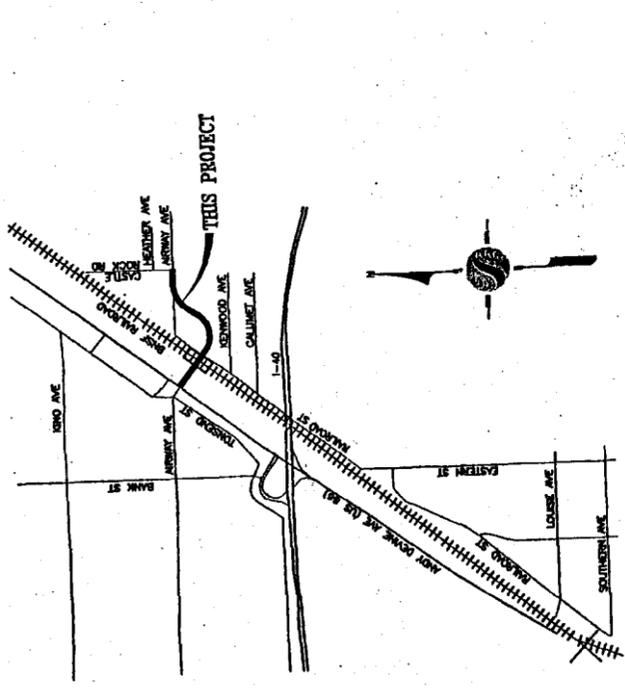
Toni Weddle
TONI WEDDLE, CITY CLERK



EXHIBIT A-1 OF A-3

ATTACHED TO AGREEMENT BETWEEN
FOR THE BNSF RAILWAY COMPANY
AND
CITY OF KINGMAN, ARIZONA

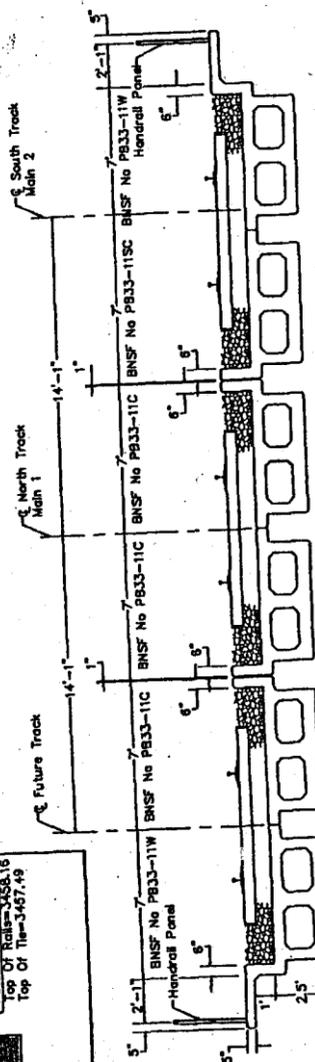
Fort Worth, TX
Scale: As Noted
Southwest Division
Seligman Subdivision
Date: April 25, 2005



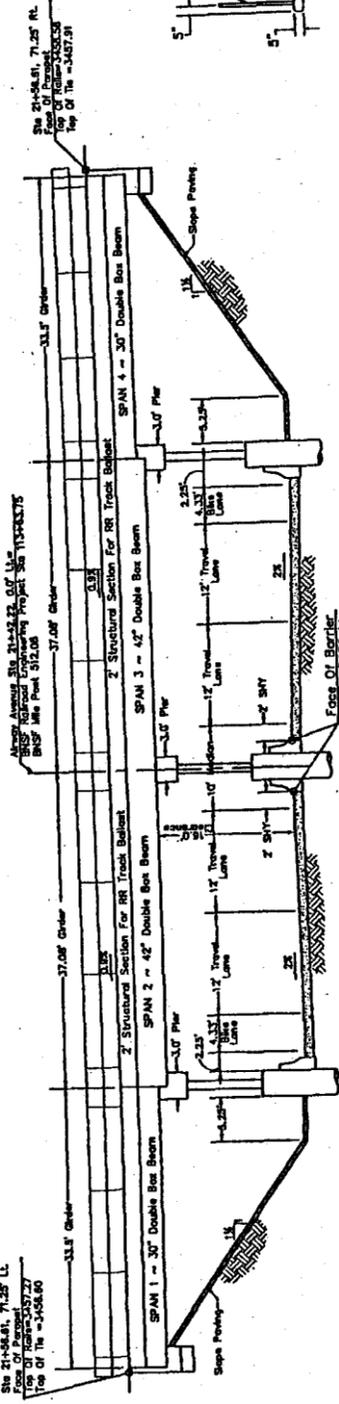
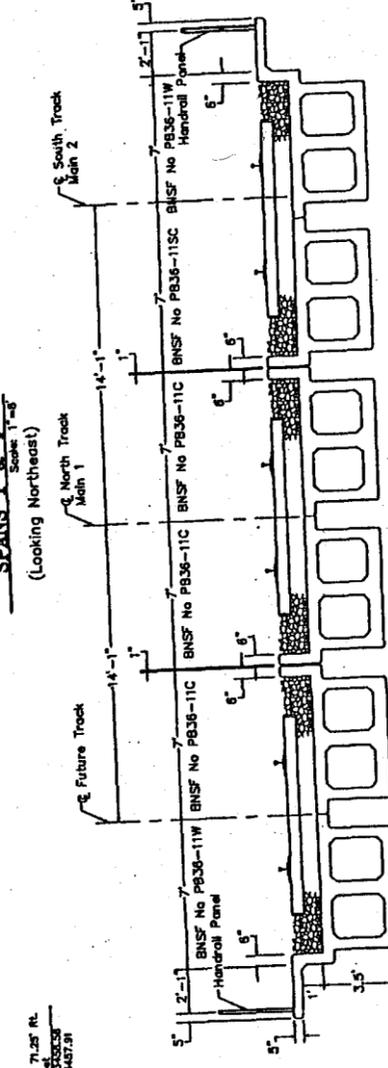
PLAN
Scale 1"=20'

VICINITY MAP
NO SCALE

TYPICAL SECTION
SPANS 1 & 4
Scale 1"=5'
(Looking Northeast)



TYPICAL SECTION
SPANS 2 & 3
Scale 1"=5'
(Looking Northeast)



ELEVATION
Section A-A
Scale 1"=20'

Typical Bridge Section With 10' Median
Airway Avenue Station 21+15.45 To Station 21+70.61

<p>STATES CONSULTING INC. 1001 WEST 10TH AVENUE SUITE 100 DENVER, CO 80202</p>	<p>CITY OF KINGMAN, ARIZONA ENGINEERING DEPARTMENT</p>

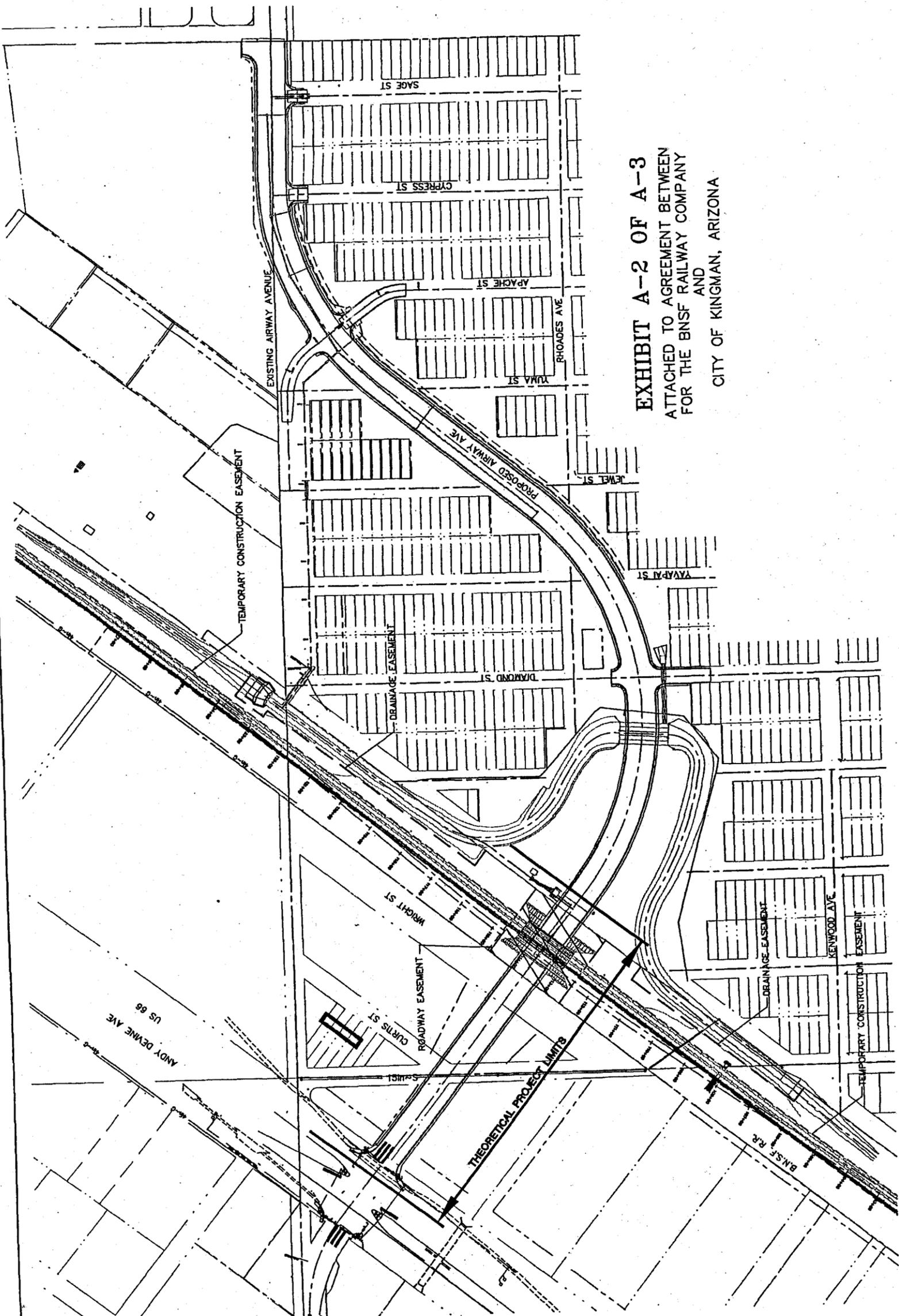
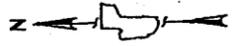


EXHIBIT A-2 OF A-3
 ATTACHED TO AGREEMENT BETWEEN
 FOR THE BNSF RAILWAY COMPANY
 AND
 CITY OF KINGMAN, ARIZONA

 STEVENS ENGINEERING INC. 1000 W. 1ST AVENUE PHOENIX, AZ 85003 PHONE: 602.256.3441 FAX: 602.256.3442	CITY OF KINGMAN, ARIZONA ENGINEERING DEPARTMENT
	AIRWAY AVENUE UNDERPASS D.O.T. NO. 0256341 EXHIBIT A-2 OF A-3

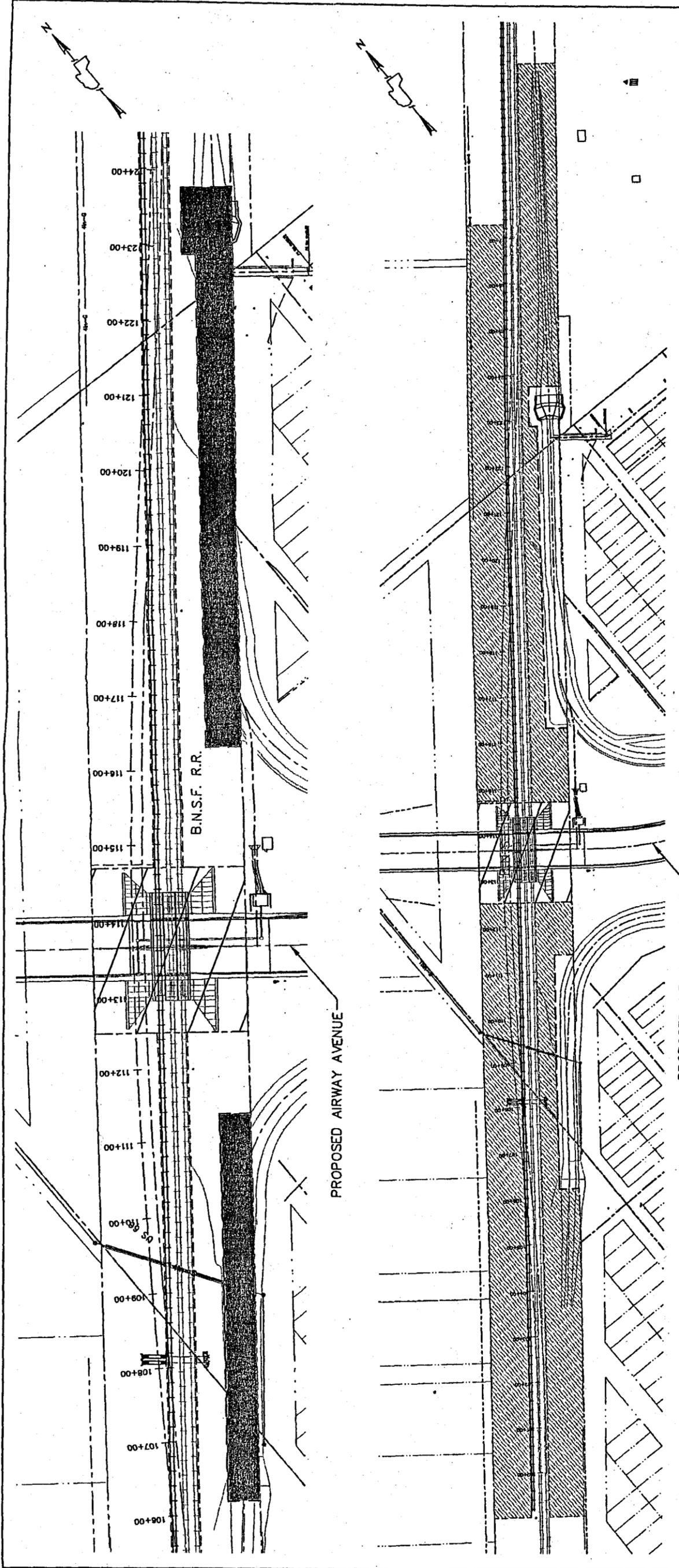
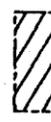


EXHIBIT A-3 OF A-3
 ATTACHED TO AGREEMENT BETWEEN
 FOR THE BNSF RAILWAY COMPANY
 AND
 CITY OF KINGMAN, ARIZONA

- LEGEND**
-  DRAINAGE EASEMENT
 -  TEMPORARY CONSTRUCTION EASEMENT
 -  ROADWAY EASEMENT

 STEVENS CONSULTING INC. 601 WEST WASHINGTON AVENUE SUITE 200 KINGMAN, ARIZONA 86401 PHONE: 928-839-1111 FAX: 928-839-1112 WWW: WWW.STEVENS-CONSULTING.COM	 CITY OF KINGMAN, ARIZONA ENGINEERING DEPARTMENT
	AIRWAY AVENUE UNDERPASS D.O.T. NO. 025634T CITY PROJECT NO.
EXHIBIT A-3 OF A-3	