

NEW APPL



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**Arizona Department of
Intermodal Transport**

Utility & Railroad Engineering Section
205 S. 17th Ave. Mail Drop 618E Phoenix, Arizona 85007
Phone 602.712.7251 Fax 602.712.3229

Jane Dee Hull
Governor

Mary E. Peters
Director

Dick Wright
State Engineer

June 8, 2001

RR-02632A-01-048

Mr. G. Robert Starkey
Railroad Safety Inspector
Arizona Corporation Commission
1210 West Washington
Phoenix, Arizona 85007

RE: TRACS No. 0940 LA LLA SR154 01C
Project No. STP-000-6(135)P
RAIL/HIGHWAY SAFETY PROGRAM
Williamette Drive (La Paz Co.)
Arizona and California Railroad Co.
AAR/DOT No: 025-925-H
RR MP: AP 82.38

DOCUMENT CONTROL

JUN 15 12 28 PM '01

RECEIVED
AZ-CORP COMMISSION

Dear Mr. Starkey:

Please furnish our office with an Opinion and Order to cover the installation of Signals described in the subject agreement.

An agreement covering the work has been signed by the Railroad Company. A copy is attached for your information and files.

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

Sincerely,

John Syers
Railroad Engineering Coordinator

Attachment



Arizona Department of Transportation
Intermodal Transportation Division

Utility & Railroad Engineering Section
205 S. 17th Ave. Mail Drop 618E Phoenix, Arizona 85007
Phone 602.712.7251 Fax 602.712.3229

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Sincerely,

A handwritten signature in cursive script that reads "John Syers".

John Syers
Railroad Engineering Coordinator

Attachment

ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

FEDERAL AID

Between

THE STATE OF ARIZONA

and

ARIZONA & CALIFORNIA RAILROAD COMPANY

AGREEMENT NO.: 2105-99-ACR
TRACS NO.: 0940 LA LLA SR154 01C
PROJECT NO.: STP-000-6(135)P
RAIL/HIGHWAY SAFETY PROGRAM
LOCATION: Willamette Drive (La Paz Co.)
AAR/DOT NO.: 025-925-H

THIS AGREEMENT is made between the STATE OF ARIZONA, acting through its DEPARTMENT OF TRANSPORTATION, and the ARIZONA & CALIFORNIA RAILROAD COMPANY, a corporation. All lettered exhibits are incorporated and made a part of this agreement by reference and attachment regardless of designation or alphabetical order.

RECITALS:

The purpose of this agreement is to a install flashers, gates and extend the existing timber crossing surface at Williamette Drive, in La Paz County, State of Arizona, where same crosses the property and tracks of RAILROAD at railroad milepost AP 82.38.

DEFINITIONS:

1. ADOT means the ARIZONA DEPARTMENT OF TRANSPORTATION.
2. AGREEMENT means this specific agreement and all attachments incorporated by reference.
3. A.R.S. means Arizona Revised Statutes.
4. MUTCD means the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.
5. RAILROAD means the Arizona & California Railroad Company.
6. SPONSOR means the governmental authority that has jurisdiction over the roadway, (La Paz County).
7. WORK means engineering, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

AGREEMENT:

1. Construction Requirements. The RAILROAD shall furnish all necessary WORK to its existing facilities in accordance with the RAILROAD plans marked

EXHIBIT "B". The WORK shall comply with the Signal Manual of Recommended Practice, published by the Association of American Railroads, and the MUTCD.

1.1 Changes in Scope of WORK. Should some unforeseen condition or combination of conditions cause a change in the scope of WORK as called for by the plans, then RAILROAD shall not be obligated to incur, and ADOT shall not be obligated to reimburse RAILROAD for its share of the cost of WORK of changed scope until such change shall have been approved, in writing, by ADOT and RAILROAD.

1.2 Federal-Aid Project. Pursuant to the provisions of Federal-Aid Policy Guide, Subchapter B, Part 646, Subpart B, there is no ascertainable net benefit to RAILROAD, and ADOT agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred in the furnishing of materials and performing the WORK as described in the "Summary of Estimate," marked EXHIBIT "A".

2. Securing Funds. It is understood and agreed that ADOT is acting as an agent for the SPONSOR in securing and administering Federal funds for this project. ADOT's liability is expressly limited to the securing and administering of Federal funds and ADOT assumes no other liability hereunder for the SPONSOR.

3. Subcontracting. The RAILROAD may, if not adequately staffed or equipped to perform the WORK required under this AGREEMENT, subcontract for the WORK. The RAILROAD is hereby given permission to subcontract to the low

bidder. The RAILROAD agrees to furnish the bid amount of the successful bid to the ADOT. If the RAILROAD wishes to subcontract to other than the low bidder, the RAILROAD must provide to the ADOT the amount of the low bid and the amount of the bid from their chosen bidder along with written justification for the proposed choice. The RAILROAD agrees no selection will be made, other than the low bidder, without the ADOT's concurrence and written approval. The ADOT reserves the right to reject any or all bids other than the low bidder.

3.1 Equal Opportunity. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A" in those cases where RAILROAD does not perform the WORK contemplated in this Agreement with its own forces.

4. Start/Completion Date. Prior to commencing construction, RAILROAD agrees to notify ADOT, in writing, of the actual construction start date. Upon completion, RAILROAD agrees to notify ADOT, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from ADOT. Construction progress payments shall not be made unless ADOT receives the notice of the actual construction start date. Final payment shall not be made unless ADOT receives the notice of the actual construction completion date.

5. Maintenance. After the installation the of WORK has been completed, RAILROAD shall maintain same as long as they remain in place.

6. The Acceptance Date. The acceptance date of this AGREEMENT shall be the day which the last party executes the AGREEMENT.

7. Arizona Corporation Commission Evidentiary Hearing. The parties agree that ADOT, on behalf of the project sponsor, shall submit an application to the Arizona Corporation Commission for a formal order from the Commission authorizing the upgrade described in this document. The parties recognize that they have the right to formal notice and an evidentiary hearing before the Commission before the Commission issues an order. The parties waive those rights. Instead, the parties desire that the Staff of the Arizona Corporation Commission draft a proposed order for the Commission's consideration at an open meeting of the Arizona Corporation Commission. The parties each agree that they will individually review the proposed order before it is voted on by the Commission. Each party agrees that if the proposed order is objectionable, it will file a written objection or exception to the proposed order before the proposed order is considered at an open meeting by the Arizona Corporation Commission. If any one party desires, the other parties hereby agree that they will not oppose the removal of the proposed order from the open meeting agenda of the Arizona Corporation Commission in favor of an evidentiary hearing. The parties agree that the resulting order shall be binding on all of the parties, including the project sponsor.

SCHEDULES:

8. RAILROAD Construction Schedule. The WORK to be performed by RAILROAD hereunder shall be commenced following ADOT authorization letter and

Agreement No. 2105-99-ACR

shall be completed within such time as is ordered by the Arizona Corporation Commission in its Opinion and Order.

PAYMENTS:

9. Submission of Invoices. The RAILROAD may submit to the ADOT monthly invoices for WORK costs from the date of the ADOT's authorization for the RAILROAD to proceed with the WORK. Except for the final invoice, monthly invoices shall only be submitted for costs of five thousand dollars (\$5,000) or more. The RAILROAD shall, within ninety (90) days after completion of WORK, submit to the ADOT detailed invoices covering the actual cost of the WORK. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition Regulations. The United States Code of Federal Regulations, 23CFR 646 B applies to this agreement. All WORK to be performed by RAILROAD hereunder shall be invoiced on an actual cost basis. All expenses incurred by RAILROAD for WORK which ADOT is obligated to reimburse RAILROAD for hereunder, including all WORK incidental to such WORK but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide 23CFR 140I Subchapter B. All the above costs shall be reasonable and auditable, and reimbursement shall be subject to ADOT's right to audit RAILROAD'S costs.

9.1 Material Procurement & Payment. Following execution of this instrument, RAILROAD will order the delivery of all materials required to perform the WORK contemplated herein and may submit to ADOT, upon receipt of all the aforementioned materials, an invoice for eighty percent (80%) of the cost of materials

to be furnished by RAILROAD. ADOT will pay all of such bills within sixty (60) days after submittal by the RAILROAD.

9.2 Payments. ADOT agrees to reimburse RAILROAD for the actual costs of labor (including overhead on RAILROAD'S own direct labor), material (including shipping and handling), equipment, subcontracts, and outside services required to complete the WORK as shown on the plans, marked EXHIBIT "B". In addition, ADOT agrees to pay RAILROAD an agreed lump-sum administrative fee, if shown on EXHIBIT "A", to cover RAILROAD'S expenses in connection with administration of WORK by subcontract and outside services. All billings shall contain ADOT's project number and agreement number. The invoice shall be sent to:

ARIZONA DEPARTMENT OF TRANSPORTATION
Utility & Railroad Engineering Section
205 South 17th Avenue, Room 357E
Mail Drop 618E
Phoenix, Arizona 85007

9.3 Timely Payment of Invoices. As soon as the WORK has been completed and placed in operation, RAILROAD shall submit to ADOT a final bill for the cost of WORK performed by RAILROAD, less any progress payments made by ADOT hereunder ADOT agrees to pay RAILROAD the amounts specified in the invoices described in this AGREEMENT above within sixty (60) days, provided RAILROAD shall have complied with the conditions of this Agreement.

10. Reimbursements. RAILROAD agrees to reimburse ADOT within sixty (60) days of notification, for any amounts ADOT disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to ADOT under protest subject to resolution.

LIABILITY:

11. Liability. ADOT and the RAILROAD each agree to be liable to the other party for its own acts of negligence and the negligence of its own employees.

STATUTORY MANDATED TERMS:

12. Arbitration. Claims and disputes between ADOT and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to WORK performed, billing, and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

13. Budget Limitations. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, A.R.S.

14. Executive order 75-5. The RAILROAD shall comply with all applicable provisions of Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors".

15. Cancellation by Governor. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. §38-511.

16. Records Retention and Audit. Pursuant to A.R.S. Sections §35-214, §35-215 and §41-1279.04, all books, accounts reports, files and other records relating to this contract shall be subject at reasonable times to inspection and audit by ADOT for five (5) years after the receipt of final payment. Such records shall be produced by RAILROAD at such ADOT offices as designated by ADOT, or at ADOT's discretion said inspection and audit may be held at RAILROAD offices during normal business hours. ADOT shall conduct its inspection and audit at its sole expense. Final payment shall not include payments made pursuant to audit exceptions or made in resolution of payments under protest.

.....

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

ARIZONA & CALIFORNIA RAILROAD COMPANY

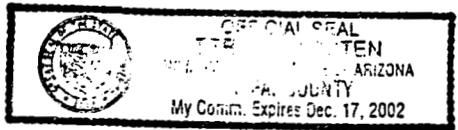
ARIZONA DEPARTMENT OF TRANSPORTATION

By: [Signature]
Title: Vice President & General Mgr.
Its: _____
Date: _____

MARY E. PETERS, DIRECTOR
By: [Signature]
J. Patrick Hackett, Manager
Utility & Railroad Engineering Section
Date: 11-16-99

ACKNOWLEDGMENT BY RAILROAD

STATE OF ARIZONA)
) §
COUNTY OF La Paz)



The foregoing instrument was acknowledged before me this 9th day of November, 1999, by John F. Scott, the Vice-President / Gen. Manager on behalf of the corporation.

My Commission Expires: December 17, 2002

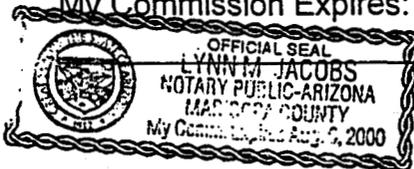
[Signature]
Notary Public

ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) §
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 16th day of NOVEMBER, 1999, by J. Patrick Hackett, the Manager of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires:



[Signature]
Notary Public

SUMMARY OF ESTIMATE

	ADOT	ACC	Total
	@94.3%	@5.7%	
Preliminary Engineering:	\$6,601.00	\$399.00	\$7,000.00
Construction:	@94.3%	@5.7%	
Signals	\$93,052.00	\$5,625.00	\$98,677.00
	@100%	@0%	
Surface	\$8,630.00		\$8,630.00
	<u>\$108,283.00</u>	<u>\$6,024.00</u>	<u>*\$114,307.00</u>

* Railroad will invoice ADOT for 100% of total work. Railroad will separate Preliminary Engineering costs from Construction costs. ADOT will pay Railroad 100% of total invoice and invoice ACC for its portion.

TRACS No. 0940 LA LLA SR154 01C
 Project No. STP-000-6(135)P
 Agreement No. 2105-99-ACR
 EXHIBIT "A"
 Sheet 1 of 3



RECEIVED

SEP 03 1999

**UTILITY & RAILROAD
ENGINEERING SVCS.**

P.O. Box AF
Parker, Arizona 85344
(520) 669-6662
Fax (520) 669-6666

August 30, 1999

Mr. John Syers
ARIZONA DEPARTMENT OF TRANSPORTATION
UTILITY & RAILROAD ENGINEERING SECTION
205 South 17th Avenue, Mail Drop 618E
Phoenix, Arizona 85007

RE: TRACS No. 0940-LA LLA SR154 01C
Project No. STP-000-6(135)P
RAIL/HIGHWAY SAFETY PROGRAM
Willamette Drive (La Paz Co.)
Arizona and California Railroad Co.
AAR/DOT No. 025-925-H

Dear John:

In response to your letter dated July 6, 1999, we are glad to provide you with the estimate for furnishing and installing flashers, gates and extending the existing timber surface.

SURFACE WORK:

MATERIAL – Treated timber crossing panels and dome head lag screws.

LABOR & EQUIPMENT – Management, supervision, engineering, labor, mobilization, equipment and expenses.

SALES TAX – 6% of 65% of the work performed by Mountain States Contracting, Inc.

ADMINISTRATION FEE – cost of necessary paperwork, overhead and inspections.

ESTIMATED COST:

MATERIAL	\$ 3,210.00
LABOR & EQUIPMENT	\$ 4,855.00
SALES TAX	\$ 314.53
ADMINISTRATION FEE	\$ <u>250.00</u>
TOTAL	\$ <u>8,629.53</u>

TRACS No. 0940 LA LLA SR154 01C
Project No. STP-000-6(135)P
Agreement No. 2105-99-AZER
EXHIBIT "A"
Sheet 2 of 3

Serving Phoenix and the Lower Colorado River Regions

SIGNAL WORK:

MATERIAL – Flasher-gate signals with: 5" alum. Mast with junction box base, two-way 12" LED type lights, gate mechanism with: alum-glass gate arm and LED type gate lights, "Railroad Crossing" signs, electronic bell, high wind guard flasher-gate foundations, underground signal cable, underground track cable, 7 cells of 240 aph. mtn. Free battery, 6 cells of 160 aph. mtn. free battery, cadweld bonds, 4' x 6' instrument bungalow with: PMD-II with RSI, MDSA-1, PSA-I, 500 ohm normal relays, 500 ohm heavy duty relay, flasher relay, power off relay, relay socket assembly, voltage test kits, Slt-50 light transformer, Craig Railchargers, variable resistors, cap & resistor, power off light, padlocks, panduit, cable risers & battery board, and breaker box.

LABOR & EQUIPMENT – Management, supervision, engineering, labor, mobilization, equipment and expenses.

OTHER – A/C power service to the instrument bungalow.

SALES TAX – 6% of 65% of the work performed by Mountain States Contracting, Inc.

ADMINISTRATION FEE – cost of necessary paperwork, overhead and inspections.

ESTIMATED COST:

MATERIAL	\$ 65,007.00
LABOR & EQUIPMENT	\$ 25,597.00
OTHER	\$ 1,000.00
SALES TAX	\$ 3,572.55
ADMINISTRATION FEE	\$ 3,500.00
TOTAL	\$ 98,676.55

We look forward to working with you on this project. Please feel free to contact either myself at (623) 842-0743, or Wayne Gilman (A&C RR) if you have any questions or comments.

Sincerely,



Vern Van de Loo
Representing:
ARIZONA & CALIFORNIA RAILROAD CO.

TRACS No. 0940 LA LLA SR154 01C
Project No. STP-000-6(135)P
Agreement No. 2105-99-AZER
EXHIBIT "A"
Sheet 3 of 3

ARIZONA + CALIFORNIA RR
WILLAMETTE CROSSING
8/30/99 N.T.S.



SIL. CAB.



ATC RR MAINLINE

ADD NEW TIMBER PANEL

INSTALL NEW FLASHINGS + GATES

← PARKER

HWY 60.

BOUSE →

TRACS No. 0940 LA LLA SR154 01C
Project No. STP-000-6(135)P
Agreement No. 2105-99-AZER
EXHIBIT "B"
Sheet 1 of 1

APPENDIX A
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of ~~the contractors commitments under this section II-2~~ and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.