

ORIGINAL

NEW APPLICATION



Arizona Department of

Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

January 19, 2006

Sam Eilers
State Engineer

Mr. Chris B. Watson
Railroad Safety Inspector
Crossing Consultant
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Re: Project No. STP – 060 - D (009) B
060 PN 212 H4662 03C
Agreement No. 2735 – 05 - MARR
Phoenix – Globe Highway
AAR/DOT No. 853 – 084 -D
Magma Arizona Railroad

AZ CORP COMMISSION
DOCUMENT CONTROL

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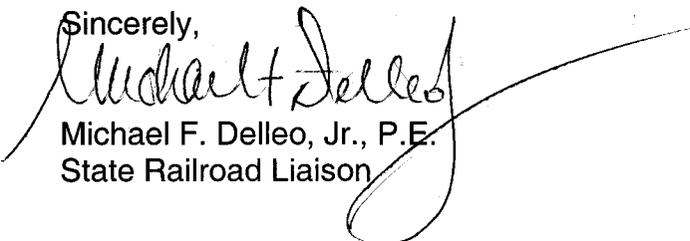
Dear Mr. Watson:

Please furnish our office with an Opinion and Order to cover the changes in the railroad crossings described in the subject Agreement. The State proposes to add two (2) eastbound lanes to U. S. Highway 60 between Florence Junction and Picket Post. The existing U.S. Highway 60 in this sector will become the westbound two-lane highway.

A new Magma Arizona Railroad crossing will be constructed in the new eastbound portion of the highway just east of Queen Valley Road. Railroad signals and warning devices will also be installed as part of the project. The Railroad Company has signed an Agreement covering the work, thirteen (13) copies of which are attached for your information and files 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.



2001 Award Recipient

**ARIZONA DEPARTMENT OF TRANSPORTATION
UTILITY AND RAILROAD ENGINEERING SECTION**

RAILROAD AGREEMENT

Between

THE STATE OF ARIZONA

And

MAGMA ARIZONA RAILROAD COMPANY

AGREEMENT NO.: 2735-05-MARR
CONSTRUCTION TRACS NO.: 060 PN 212 H4662 03C
CONSTRUCTION PROJECT NO.: STP - 060 - D (009) B
HIGHWAY: PHOENIX – GLOBE HIGHWAY
LOCATION: U.S. 60 – Florence Junction to Queen Creek
RRMP: 14.70
AAR/DOT #: 853-084-D

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

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- Exhibit "A" Cost Estimate
- Exhibit "B" Print Showing Easement From MARR That STATE Needs to Construct the PROJECT
- Exhibit "C-1" Legal Description of Easement Granted by MARR to STATE
- Exhibit "C-2" Legal Description of Easement Granted by STATE to MARR
- Exhibit "D" Prior Rights Documentation
- Exhibit "E" Plans of Work to be Performed by MARR

I. RECITALS:

The purpose of this AGREEMENT is to enable STATE to complete a highway project. The parties hereto desire to set forth by this instrument their understanding and agreements with respect to responsibilities for the construction and maintenance of facilities affected by the PROJECT in Pinal County, Arizona. STATE proposes with the PROJECT to widen the roadway to accommodate two lanes in each direction. In order to complete this PROJECT, it is necessary for the RAILROAD to install four (4) new advanced warning devices, install two (2) new cantilever RAILROAD crossing signals, remove two (2) existing cantilever RAILROAD signals, install a new concrete crossing surface where the new eastbound lanes of U.S. Highway 60 cross the RAILROAD tracks, and furnish the services of flagmen through the CONTRACTOR OCCUPANCY/ACCESS LICENSE AGREEMENT to protect RAILROAD property and trains due to the operations of STATE and STATE's contractor in connection with the construction of the project.

The RAILROAD's facilities to be relocated have PRIOR RIGHTS, in total or in part, by virtue of their existence within certain easements, conveyances and deeds, including items described in Exhibit "D", or by virtue of their existence in the roadway before it was a roadway.

II. DEFINITIONS:

- A. ADOT means the ARIZONA DEPARTMENT OF TRANSPORTATION.
- B. ADOT EMERGENCY means a RAILROAD failure or occurrence, which affects the safety of the motorist or the highway.
- C. AGREEMENT means this specific agreement and all attachments incorporated by reference.
- D. A.R.S. means Arizona Revised Statutes.
- E. BACK CHARGE means to invoice and collect from the RAILROAD for costs to STATE caused by the RAILROAD not completing WORK in accordance with AGREEMENT schedule.
- F. CONTRACTOR OCCUPANCY/ACCESS LICENSE AGREEMENT is the standard agreement the RAILROAD uses to permit contractor's entry on the RAILROAD property. This is a separate agreement between STATE's contractor and the RAILROAD, included by reference.
- G. CONSTRUCTION PROJECT NUMBER means the roadway construction project number utilized for the STATE construction PROJECT, which is STP-060-D (009) B.
- H. CONSTRUCTION TRACS NUMBER means the roadway construction accounting number utilized for the STATE construction project, which is 060 PN 212 H4662 03C.
- I. 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.

J. MUTCD means the "Manual on Uniform Traffic Control Devices" and any amendments and/or revisions thereto.

K. PRIOR RIGHTS means rights associated with one party's use or occupancy of land, or with the facilities located on such land, that are, because of priority in time or other reasons, superior to the rights of the other party.

L. PROJECT means this STATE roadway construction project.

M. RAILROAD means MAGMA ARIZONA RAILROAD COMPANY.

N. RAILROAD EMERGENCY means any failure or condition affecting RAILROAD's facilities that has a substantial effect on RAILROAD's functions and requires immediate action to remedy the failure or condition.

O. RELOCATE or RELOCATION means to move, adjust, or remove a RAILROAD facility to avoid conflict with PROJECT construction.

P. RELOCATED FACILITY means the facilities so moved, adjusted, or removed.

Q. WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

R. WORKING DAY means a calendar day, exclusive of Saturdays, Sundays and STATE recognized holidays, on which weather conditions will permit the RAILROAD construction operations to proceed for a major part of the day with the normal working force.

III. AGREEMENT:

A. Easement Requirements. MARR shall execute and deliver to STATE an easement whereby MARR grants to STATE the right to construct, use, access, maintain, repair, renew and reconstruct U.S. Highway 60 over the portions of MARR's property shown in Exhibit "B" as consisting of 108,924 square feet, more or less, and also described in the legal description marked Exhibit "C-1". In addition, MARR agrees to provide STATE a Temporary Construction Easement consisting of 4995 square feet, more or less, to work in the MARR right-of-way, also as shown in Exhibit "B". STATE grants to MARR an easement for an area of 6,988 square feet over which it has prior rights as shown in Exhibit "B" and also described in the legal description marked Exhibit "C-2".

B. Construction Requirements. The RAILROAD shall furnish all necessary WORK covering the removal of its existing facilities and construction of new facilities in accordance with the RAILROAD cost estimate and plans marked Exhibit "A" and Exhibit "E", respectively. The RAILROAD will remove and disassemble the track section from approximately the southern edge of the existing concrete crossing to at least twenty (20) feet beyond the edge of the new crossing. If this work is not completed at Notice to Proceed, the STATE's contractor shall contact the RAILROAD to coordinate its completion. The WORK shall comply with the MUTCD and the Association of American Railroad's publication entitled "Signal Manual of Recommended Practice". Per Arizona Corporation Commission (ACC) Decision ~~61142~~, STATE will remove the advance "EXEMPT" (W10-1a) signs from the advance warning flasher poles and relocate them to the new advance warning flasher poles. MARR will remove the "EXEMPT" (R15-3)

signs currently installed below the existing crossbucks on the cantilevered sign structure and relocate them to the new cantilevered sign structure.

If new R15-3 signs are required, STATE will produce the signs for installation by the contractor or MARR, respectively.

The RAILROAD may install, at its discretion, sleeves under the proposed eastbound US 60 prior to the placement of the cement slurry subgrade per the construction plans. The STATE's contractor shall contact the RAILROAD General Manager and its contractor a minimum of thirty (30) days prior to placement of the cement slurry subgrade. The STATE's contractor shall contact the RAILROAD General Manager within forty-eight (48) hours after the placement of the cement slurry subgrade and prior to any backfill to obtain RAILROAD's acceptance of the subgrade. The STATE's contractor may, at its discretion or in conjunction with the Arizona Water Company, place a sleeve or a sleeve and temporary waterline under the tracks after the tracks have been removed as described above. The backfill and compaction shall meet the requirements of Union Pacific Railroad Details and Specifications at <http://www.uprr.com/reus/pipeline/dr0404b.pdf>. No additional payment will be made by STATE to RAILROAD for this work. The STATE's contractor shall contact the RAILROAD General Manager forty-five (45) days prior to the placement of aggregate base material within the cement slurry backfill area. RAILROAD and its contractor will install the ballast, ties, track and crossing prior to the eastbound US 60 placement of aggregate base and paving operations by STATE's contractor. The STATE's contractor shall not cross the new railroad tracks until approved in writing by the RAILROAD. The contractor will provide staking as required by the RAILROAD. Work is anticipated to

include control point establishment; track location control; as-built surveys for track, subgrade, crossing, signals, signs, sleeves; marking locations of proposed signs and signals, marking locations of sleeves and other underground elements, and concrete flatwork, as required.

C. Contractor's Relations with the RAILROAD. In the event any of the work upon property of RAILROAD, as herein contemplated, should be advertised for bids by STATE, the awarded contract shall require STATE's contractor to obtain a CONTRACTOR OCCUPANCY/ACCESS LICENSE AGREEMENT from the RAILROAD and not enter upon RAILROAD property until said agreement is executed between contractor and RAILROAD. All work upon said PROJECT shall be performed at such times, and in such manner, as not to interfere with, or endanger, the operations of RAILROAD. STATE and its contractor shall also observe RAILROAD'S rules and regulations with respect thereto. Upon notice of award and prior to the pre-construction conference, the contractor shall contact the RAILROAD to initiate the review and approval process to obtain the Right of Entry. The contractor shall provide the RAILROAD General Manager an anticipated construction schedule a minimum of thirty (30) calendar days in advance of when personnel, equipment or construction activities will be within the RAILROAD's right of way. The STATE's contractor shall contact the General Manager five (5) working days prior to construction of each element of work. During construction, the STATE's contractor shall keep the General Manager informed of work progress on a weekly basis.

D. Notification of RAILROAD. STATE and its contractor shall give notice to RAILROAD's General Manager before commencing any work upon RAILROAD

property as required in the CONTRACTOR OCCUPANCY/ACCESS LICENSE AGREEMENT.

E. Flagmen. RAILROAD shall provide flagmen to protect RAILROAD property and trains due to the operations of STATE's contractor, when working within twenty-five (25) feet of the track centerline at all times that the tracks are in service. Flagmen will be paid by STATE's contractor through the CONTRACTOR OCCUPANCY/ACCESS LICENSE AGREEMENT.

F. Ownership of Facilities. RAILROAD shall be the sole owner of the crossing safety facilities constructed under this AGREEMENT. Nothing herein shall be construed as conveying or granting any right, title or interest in the facilities to anyone other than the RAILROAD.

G. Maintenance. Maintenance operations and associated costs for RAILROAD facilities covered by this AGREEMENT will be the responsibility of the RAILROAD.

H. Coordination of Access for Maintenance. Unless an emergency exists, STATE will contact the RAILROAD's General Manager at least fifteen (15) working days in advance of STATE scheduled maintenance activities on RAILROAD property. When said activities require access to any area within twenty-five (25) feet of the centerline of RAILROAD tracks, STATE and the RAILROAD shall collectively identify and schedule a time suitable to both parties when STATE may carry out maintenance activities unrestrained by RAILROAD operations.

I. Vehicular Traffic. The STATE's contractor will provide traffic control devices as required by the RAILROAD or its contractor. The devices shall meet STATE requirements as set forth in the ADOT Standard Specifications. The STATE's

contractor will set up and remove the traffic control devices in coordination with the RAILROAD and its contractor. The removal and installation of the overhead cantilevered signal structure shall be completed with minimal disruption to vehicular traffic. A full roadway closure shall be a maximum of twenty (20) minutes for each structure. The RAILROAD shall make use of vehicular traffic control devices as necessary, per the MUTCD guidelines, to construct the required cantilevers, warning devices, crossing surface and related appurtenances. RAILROAD may coordinate with STATE's contractor to share those vehicular traffic control devices supplied by STATE's contractor.

The RAILROAD shall not maintain, construct, reconstruct, inspect or operate any of its facilities from highway traffic lanes. In case of an ADOT EMERGENCY involving RAILROAD's facilities, RAILROAD shall have reasonable use of the roadway notwithstanding the foregoing restriction. In case of a RAILROAD EMERGENCY, RAILROAD shall have use of STATE right of way outside the highway traffic lanes, as it reasonably deems necessary to correct, repair, replace or reconstruct facilities affected by the RAILROAD EMERGENCY. The RAILROAD shall, as soon as practical during any ADOT EMERGENCY or RAILROAD EMERGENCY repairs, provide appropriate safety devices to protect the highway user as set forth in the MUTCD (including all official changes thereto), for all work within the STATE right of way.

J. Completion Date. RAILROAD is advised that no payments will be made until this Agreement has been fully executed. The RAILROAD design and construction start dates shall not be prior to receiving a notice to proceed for each from STATE. Prior to

submitting its final invoice to STATE, the RAILROAD will notify STATE, in writing, of the actual completion date.

K. Subcontracting. The RAILROAD may, if not adequately staffed or equipped to perform the WORK required under this AGREEMENT, subcontract for the WORK utilizing a proper competitive bidding process. The RAILROAD is hereby given permission to subcontract to the lowest responsible bidder. The RAILROAD agrees to furnish the bid amount of the successful bid to STATE. If the RAILROAD wishes to subcontract to other than the lowest responsible bidder, the RAILROAD must provide to STATE the amount of the lowest responsible bid and the amount of the bid from its chosen bidder, along with written justification for the proposed choice. The RAILROAD agrees no selection will be made, other than the lowest responsible bidder, without STATE's concurrence and written approval. STATE reserves the right to reject any or all bids except the lowest responsible bid.

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

IV. SCHEDULES & PAYMENTS:

A. RAILROAD Construction Schedule. The WORK to be performed by RAILROAD hereunder shall begin following its receipt of the STATE authorization letter for construction and shall be completed in coordination with STATE's contractor and within such time as directed by the Arizona Corporation Commission (ACC) in its Opinion and Order. The RAILROAD shall coordinate with STATE's contractor with respect to the construction schedule and establish, by mutual consent, a work activity schedule suitable to both parties for the completion of RAILROAD WORK and

contractor's activities. A copy of the RAILROAD's proposed construction schedule shall be provided to STATE's Engineer.

1. **Schedule Changes.** Changes to the construction schedule for the RAILROAD's WORK can be made upon mutual consent of the RAILROAD and STATE's Engineer. The RAILROAD shall not be authorized to extend the time schedule beyond the time frame authorized by the ACC, unless, or until, so authorized by the ACC in writing.

2. **RAILROAD Failure to Meet Schedule.** If RAILROAD does not complete its construction in accordance with the RAILROAD construction schedule, and/or any subsequent authorized extension to said schedule and the delay is caused by RAILROAD 's acts, or failure to act, whether negligent or not, and STATE notifies RAILROAD of a conflict, or interference, with STATE's contractor, RAILROAD shall be responsible, and may be BACK CHARGED by STATE, for any reasonable costs incurred by STATE, or by STATE's contractor, as a result of such delay. Despite any such delay, RAILROAD shall work as expeditiously as possible under the circumstances to complete the WORK. If RAILROAD's WORK is impacted by circumstances beyond its control, RAILROAD's schedule duration shall be adjusted accordingly, in writing, by STATE.

3. **Payments for Interference.** Neither party shall unreasonably interfere with the other party in connection with work to be performed pursuant to this AGREEMENT. Any reasonable costs incurred by either party in connection with such unreasonable interference, including any BACK CHARGE, shall be paid by the interfering party, to the party incurring such costs, within ninety (90) calendar days after receipt of an invoice

detailing such costs. Any charges with which the interfering party disagrees shall be paid to the party incurring such costs under protest, subject to resolution through compromise, arbitration, or adjudication as provided by this AGREEMENT.

B. Payments. STATE will reimburse the RAILROAD for the actual cost of WORK, subject to STATE's right to audit the RAILROAD costs, including any changes approved by STATE. The estimated cost of the RAILROAD FACILITY is set forth in Exhibit "A." STATE is not responsible for any costs, which are betterments or enhancements to the RAILROAD FACILITIES. The parties agree that the items listed in Exhibit "A" (except for any items identified to be paid by RAILROAD) do not constitute betterments or enhancements within the meaning of this AGREEMENT.

1. Changes in Scope of WORK. In the event conditions or circumstances require a change in the scope of the RAILROAD's work on the construction as set forth in Exhibit "A," each party shall agree in writing to the changes, including payment responsibilities, prior to performing the work. STATE shall not be responsible for any costs associated with any change in the scope of the RAILROAD's work until STATE approves the change in writing. The schedule for completion of RAILROAD's WORK shall be adjusted to accommodate the change in scope and the time necessary for STATE to process the change request.

2. Cost Increases. ADOT approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit "A", 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 the RAILROAD pending resolution.

3. Submission of Invoices. The RAILROAD may submit to ADOT itemized monthly invoices for WORK costs from the date of STATE'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 hundred dollars (\$500) or more. The RAILROAD shall, within ninety (90) days after completion of WORK, submit to STATE detailed invoices covering the actual cost of the WORK, including applicable taxes and standard RAILROAD overhead and subcontracting administration fee. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition Regulations. The United States Code of Federal Regulations, 23CFR 646 Subpart A, is incorporated into this agreement by reference. Invoices shall include the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice," as the case may be. In the absence of a compliant accounting system, STATE will allow a charge for overhead and indirect costs equal to five (5) percent of the total labor surcharges and materials. This charge does not include any amount based on allowable subcontracts included in the Agreement. If the RAILROAD wishes to use an existing continuing contract with a subcontractor, it shall supply STATE with supporting documentation as to the reasonableness of the cost. STATE will provide specific approval if the costs are deemed reasonable.

4. Payment of Invoices. STATE agrees to pay the RAILROAD the invoiced amount within ninety (90) days of receipt of each invoice, provided the RAILROAD has complied with all conditions of this AGREEMENT.

5. Reimbursements. The RAILROAD shall reimburse STATE, within ninety (90) days of receiving written notification, for any amounts STATE disallows as a result

of its audit. Any audit exceptions with which the RAILROAD disagrees shall be paid to STATE, under protest, subject to resolution by STATE and the RAILROAD through compromise, arbitration or adjudication as provided in this AGREEMENT.

V. LIABILITY:

A. Liability. STATE 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.

VI. STATUTORY MANDATED TERMS:

A. Arbitration. 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.

B. Budget Limitations. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

C. 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".

D. 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.

E. Records Retention and Audit. 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 (5) years after the receipt of final payment. Such records shall be produced by the RAILROAD at any STATE office as designated by STATE. At STATE's discretion said inspection and audit may

be held at RAILROAD's office during normal business hours. STATE shall conduct its inspection and audit at its expense, including RAILROAD's audit costs.

VII. MISCELLANEOUS CONDITIONS:

A. Communication for this AGREEMENT. Communication required to be given pursuant to this AGREEMENT shall be:

Arizona Department Of Transportation
Utility and Railroad Engineering Section
Attn.: Engineer - Manager
205 South 17th Avenue, Mail Drop 618E
Phoenix, AZ 85007
Ph: (602) 712-7541 Fax: (602) 712-3229

Magma Arizona Railroad Company
Attn.: Vice President and General Manager
P.O. Box M
San Manuel, AZ 85631
Ph: (520) 385-3456 Fax: (520) 385-3623

B. AGREEMENT Content and Modification. 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.

C. Laws. This AGREEMENT shall be governed by the laws of the State of Arizona.

D. Breach of AGREEMENT. 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.

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

MAGMA ARIZONA
RAILROAD COMPANY

ARIZONA DEPARTMENT OF
TRANSPORTATION

By: *Kent Fletcher*

VICTOR MENDEZ, DIRECTOR

Title: V.P.

Sam Maroufkhani

By: Sam Maroufkhani - Deputy State
Engineer

Date: 1/10/06

Date: 1/18/2006

Recommended By: *Bruce Vana*
Bruce Vana, P.E., Engineer - Manager
Utility and Railroad Engineering Section

ACKNOWLEDGMENT BY UTILITY

STATE OF Arizona)
) ss
COUNTY OF Pinal)



The foregoing instrument was acknowledged before me this 10 day of January, 2006, by Kent Fletcher, the VP on behalf of the corporation.

My Commission Expires: 6-10-08

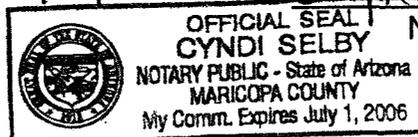
Kathryn L. McClure
Notary Public

ACKNOWLEDGMENT BY STATE

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 18th day of January, 2006, by: -Sam Maroufkhani, Deputy State Engineer, , Arizona Department of Transportation.

My Commission Expires: 07/01/2006



Cyndi Selby
Notary Public

AGREEMENT # 2735-05-MARR

Summary Of Estimated Costs

AGREEMENT NO.: 2735-05-MARR
CONSTRUCTION TRACS NO.: 060 MA 212 H4662 03C
CONSTRUCTION PROJECT NO.: STP-060-D(009)B
HIGHWAY: PHOENIX-GLOBE HIGHWAY
LOCATION: U.S. 60 – Florence Junction to Queen Creek
RRMP 14.70
AAR/DOT # 853-084-D

MARR WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications, construction labor, materials and equipment called for in the AGREEMENT, including approved changes in scope.

Surface & Track Work Estimate	\$59,797.00
Signal Work Estimate	\$164,139.00
MARR Administrative Fee	\$4,602.00

Total Estimated RR Project Costs	\$228,538.00
---	---------------------

EXHIBIT "A"



**MOUNTAIN
STATES
CONTRACTING**

6813 W. Frier Drive
Glendale, Arizona 85303
(623) 842-0743 Fax (623) 842-0944
800-827-0743

May 23, 2005

Mr. Kent Fletcher
BHP COPPER, INC.
SAN MANUEL ARIZONA RAILROAD COMPANY
Post Office Box M
San Manuel, Arizona 85631
Bus. (520) 385-3456
Fax (520) 385-3810
kent.r.Fletcher@bhpbilliton.com

RE: HIGHWAY 60/QUEEN VALLEY ROAD GRADE CROSSING
MAGMA ARIZONA RAILROAD

Dear Kent:

We appreciate the opportunity to provide the scope of work and cost to rebuild the grade crossing at U.S. Highway 60 and the Magma Arizona Railroad Mainline. We propose to perform the following work:

Surface and Track Work:

- Construction staking will be provided by others.
- Any traffic control or barricades will be provided by others.
- Remove and disassemble the existing track from the end of the existing large rail to at least 20' beyond the edge of the crossing.
- Excavate the crossing area to proper subgrade.
- Rebuild the track from the existing large rail to at least 20 feet beyond the edge of the crossing, utilizing the following material:
 - Relay quality 131# or larger; rail, thermite welded into continuous strings.
 - Relay quality; double shoulder tie plates and rail anchors (box anchor every tie).
 - Necessary buffer rails and compromise joints to transition to the existing 70# rail.
 - New track spikes (4 per plate).
 - New 7"x 9"x 10' hardwood crossties spaced at 19.2" C-C through the crossing.
 - New 7"x9"x8' hardwood ties outside of the crossing panels.
- Raise the track to proper grade and tamp a minimum of 8" of new crushed rock ballast under the ties.
- Dress the track to the top of the ties, utilizing new crushed rock ballast.
- Install 90' of new pre-stressed, pre-cast concrete crossing panels.
- All road and approach work will be performed by others.
- All road striping and signs to be provided by others.
- Waterline relocation to be performed by others.
- Sand Barrel Crash Cushions and concrete slabs to be provided by others.

EXHIBIT "A"

May 23, 2005
BHP COPPER, INC.
Page Two

Surface and track work lump sum price... \$ 59,797.00

Signal Work:

- Mobilize the necessary manpower, equipment and material.
- Furnish and install 4 new Advanced Warning Flashers, foundations, PVC conduit, junction pull boxes and wire.
- Furnish and install required new power line for Advanced Warning Flashers.
- Remove 1-2 existing Advanced Warning Flashers.
- Furnish and install 2 new Cantilever Railroad Crossing Signals including poured cantilever signal foundations.
- Remove 2 existing Cantilever Railroad Crossing Signals, jack hammering foundations to ~~existing~~ proposed natural ground elevation.

Lump sum signal work price...	\$ 165,639.00
Less credit for salvaged devices...	<u>1,500.00</u>
Total	\$ 164,139.00

The listed estimate is based on complete closure of the road and the following items are not included in the listed price:

- Bond or permits if necessary.
- Construction staking.
- Road closure or barricades.
- Road or approach work.
- Striping or signs.
- Waterline relocation.
- Sand barrel crash cushion.
- Any concrete work.
- Sales tax.

Mountain States Contracting, Inc. holds a Railroad Contractors License in good standing with the Arizona Registrar of Contractors. License number 080162.

We look forward to working with you on this project. Please feel free to contact our office with any questions or comments.

Sincerely,

Vern Van de Loo
President

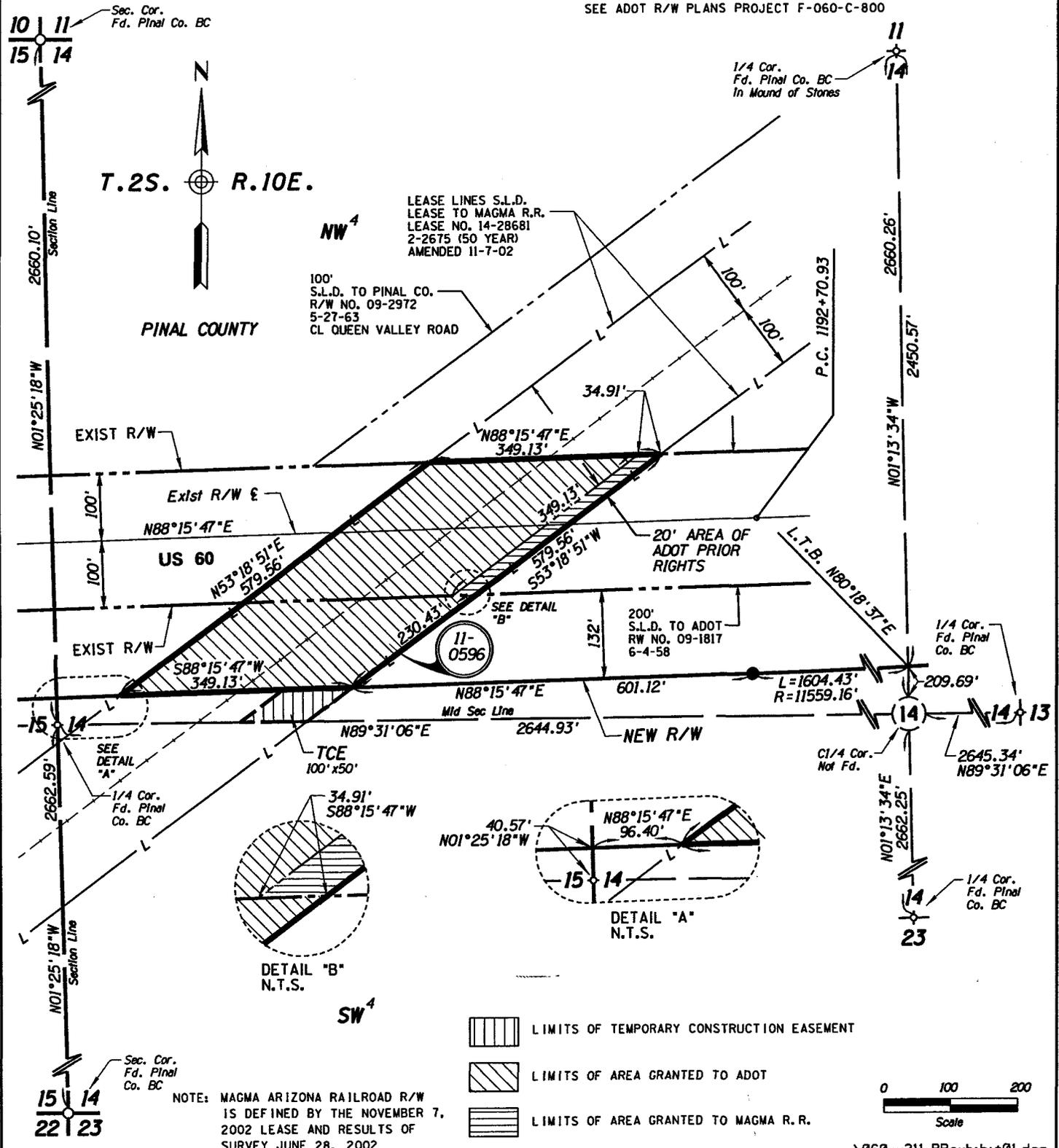
EXHIBIT "A"

PARCEL EXHIBIT SHEET TO OBTAIN RAILROAD RIGHT OF WAY ENTRY

TRACS NO : 060 PN 212 H4662 01R FED ID : U 060-C-800	PARCEL NUMBER 11-596	TOTAL AREA 6,988	AREA GRANTED 115,912	AREA REQUIRED			REMAINDER	
				GROSS INCLUDING (EXISTING R/W) 108,924	NET EXCLUDING (EXISTING R/W) 4,995 TCE	NEW EASEMENTS 6,988	LEFT	RIGHT

ALL AREAS ARE IN SQUARE FEET UNLESS OTHERWISE NOTED

NOTE: FOR R/W INFORMATION NOT SHOWN ON THIS EXHIBIT, SEE ADOT R/W PLANS PROJECT F-060-C-800



NOTE: MAGMA ARIZONA RAILROAD R/W IS DEFINED BY THE NOVEMBER 7, 2002 LEASE AND RESULTS OF SURVEY JUNE 28, 2002

...060-rw211-RRexhibit01.dgn

**DESCRIPTION FOR RIGHT OF WAY
GRANTED TO STATE
BY MAGMA ARIZONA RAILROAD**

That portion of the Magma Arizona Railroad right of way defined by the November 7, 2002 State Land Department Lease No. 14-28681 and the June 28, 2002 Results of Survey, located in the Northwest quarter (NW¼) of Section 14, Township 2 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, which lies between the existing North right of way line of the 200.00 foot wide U.S. Highway 60 (PHOENIX – GLOBE HIGHWAY) and the following described line:

Commencing at a Pinal County brass cap marking the West quarter corner of said Section 14, being South 1°25'18" East 2660.10 feet from a Pinal County brass cap marking the Northwest corner of said Section 14;

thence along the West line of said Section 14, North 1°25'18" West 40.57 feet to the POINT OF BEGINNING;

thence North 88°15'47" East 1046.65 feet;

thence along a curve to the Left, having radius of 11,559.16 feet, a length of 1604.43 feet to the POINT OF ENDING on the North – South mid section line of said Section 14, being South 1°13'34" East 2450.57 feet from a Pinal County brass cap in mound of stones marking the North quarter corner of said Section 14.

EXCEPTING that portion of the southeasterly 20.00 feet of said Magma Arizona Railroad right of way as it is measured at right angles to and parallel with the southeasterly line of said Magma Arizona Railroad right of way line, which lies between the existing North and South right of way lines of said 200.00 foot wide U.S. Highway 60.

Exhibit "C-1"

PROJECT: U-060-C-800

SECTION: Florence Jct. - Superior

PARCEL: 11-0596

060 PN 212 H4662 01R

CR 10/3/05

**DESCRIPTION FOR EASEMENT
GRANTED TO MAGMA ARIZONA RAILROAD
BY STATE FOR PORTION OF U.S. HIGHWAY 60**

That portion of the Magma Arizona Railroad right of way defined by the November 7, 2002 State Land Department Lease No. 14-28681 and the June 28, 2002 Results of Survey, being a portion of the existing 200.00 foot wide right of way of U.S. Highway 60 (PHOENIX – GLOBE HIGHWAY), for which the Arizona Department of Transportation (ADOT) has prior rights, per the June 4, 1958 State Land Department Lease No. 9-1817, located in the Northwest quarter (NW¼) of Section 14, Township 2 South, Range 10 East, Gila and Salt River Meridian, Pinal County, Arizona, described as follows:

Commencing at a Pinal County brass cap marking the West quarter corner of said Section 14, being South 1°25'18" East 2660.10 feet from a Pinal County brass cap marking the Northwest corner of said Section 14;

thence along the West line of said Section 14, North 1°25'18" West 40.57 feet;

thence North 88°15'47" East 445.53 feet to the southeasterly right of way line of said Magma Arizona Railroad;

thence along said southeasterly right of way line North 53°18'51" East 230.43 feet to the POINT OF BEGINNING on the existing South right of way line of said 200.00 foot wide U.S. Highway 60;

thence along said existing South right of way line, South 88°15'47" West 34.91 feet;

thence North 53°18'51" East 349.13 feet to the existing North right of way line of said 200.00 foot wide U.S. Highway 60;

thence along said existing North right of way line, North 88°15'47" East 34.91 feet to said southeasterly right of way line of the Magma Arizona Railroad;

thence along said southeasterly right of way line, South 53°18'51" West 349.13 feet to the POINT OF BEGINNING.

Exhibit 'C-2"

PROJECT: U-060-C-800

SECTION: Florence Jct. - Superior

PARCEL: 11-0596

060 PN 212 H4662 01R

CR 10/3/05

Form 20-5-REV 1.
(Sept. 10, 1912.)

UNITED STATES DEPARTMENT OF AGRICULTURE

FOREST SERVICE

I RAILROAD STIPULATIONS

Uses... Crook
(Forest.)

Magma-Arizona Railroad Co. (Railroad.)
(Name of applicant.)

Right of way 2/1/22 Phoenix 053144
(Date of application.)

WHEREAS, The railroad right of way applied for by the Magma-Arizona Railroad Co.

..... Company (hereinafter called the Applicant) is

within the Crook National Forest, as shown by a certain

tracing executed by W. C. Browning, Vice-Pres on January 25 1922

and filed in the United States Land Office at Phoenix State of

Arizona on February 1 1922 and

WHEREAS, The regulations of the United States Department of the Interior concerning rights of way for railroads, reservoirs, canals, etc., provide that whenever such rights of way are located upon National Forests the Applicant must enter into such stipulations and execute such bonds as the Secretary of Agriculture may require for the protection of the National Forests; and

WHEREAS, The Secretary of Agriculture requires for the protection of said

..... Crook National Forest that the Applicant shall enter into the stipulation hereinafter set forth;

Now, THEREFORE, In consideration of the granting of the right of way applied for, the Applicant does hereby stipulate and agree, and does bind itself, its successors, and assigns, as follows, to wit:

1. To clear and keep clear of all timber and other inflammable substances all of said right of way and all other lands owned or controlled by the Applicant as a right of way, however acquired, lying between the points where the center line of said right of way intersects said Forest boundaries and all lands of said Forest within 200 feet of said center line; but the Supervisor in charge of said National Forest may in writing specifically exclude from the operation of this clause such lands as he deems proper, as for example, when a stream, the right of way of another railroad company, or other adequate firebreak lies between the right of way of the Applicant and that part of the Forest which may be in danger from fire; to cut all trees, when physically possible, so that they shall fall entirely within the strip to be cleared, and to remove all timber that, when cut on the strip to be cleared, may fall without the strip.

2. To pay to the No charge National Bank of

..... (United States Depository), or such other depository

EXHIBIT "D"

SUPERVISOR'S COPY

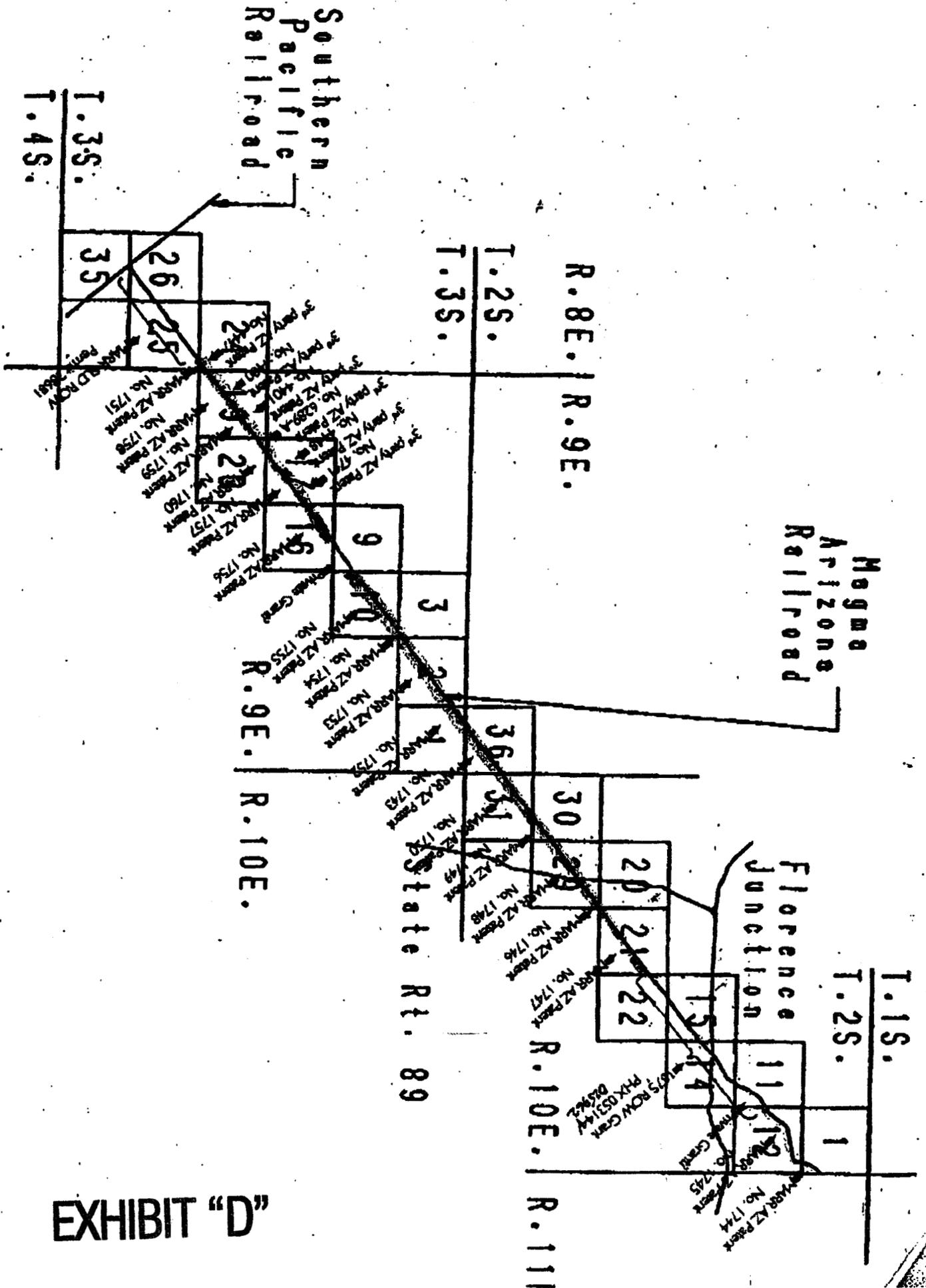
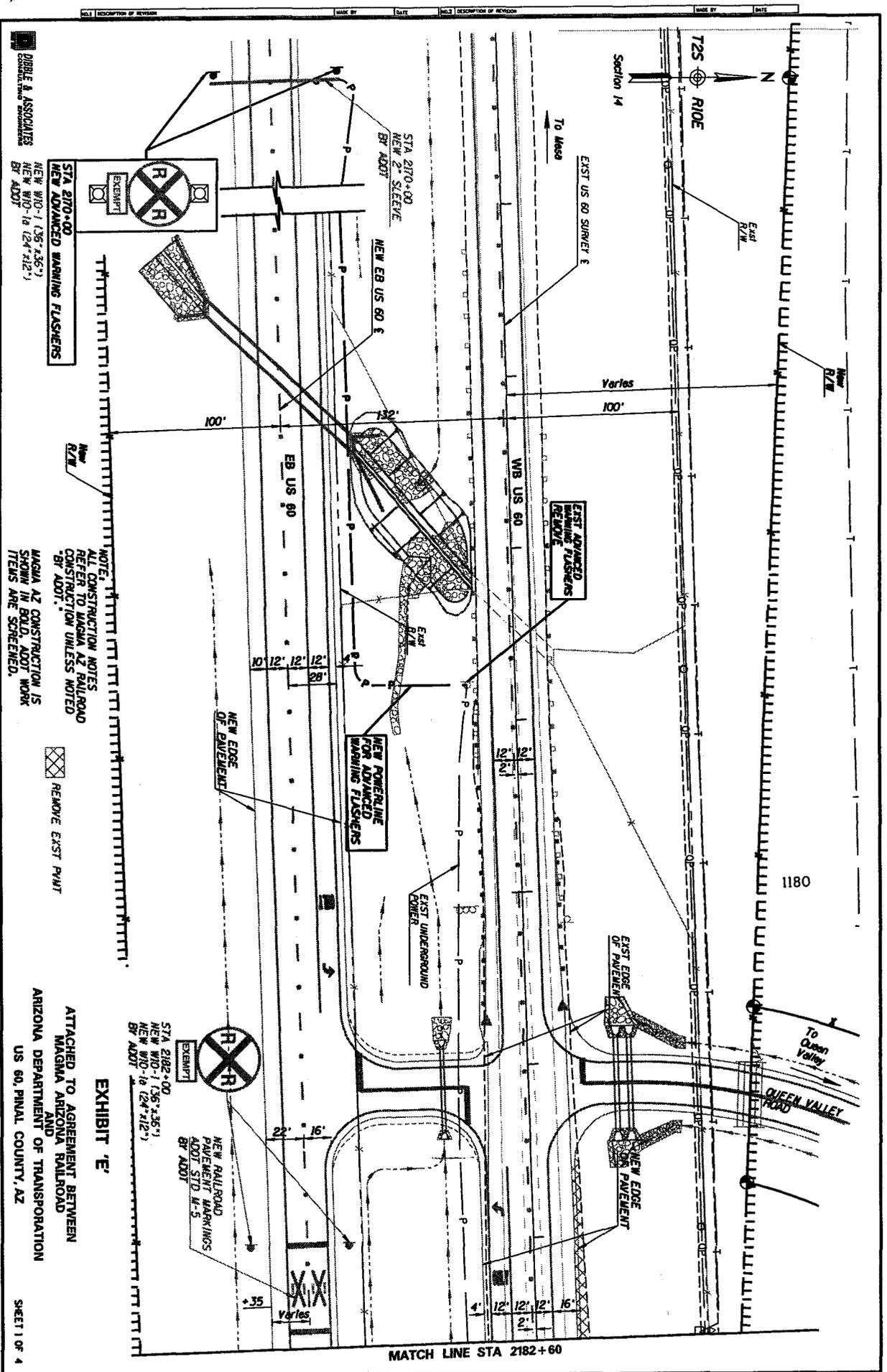


EXHIBIT "D"



DIBBLE & ASSOCIATES
 CONSULTING ENGINEERS
 NEW WID-1 (35°+35')
 NEW WID-1b (24°+32')
 BY ADDT

STA 2170+00
 NEW ADVANCED WARNING FLASHERS
 EXHIBIT 'E'

NOTE:
 ALL CONSTRUCTION NOTES
 REFER TO MAGMA AZ RAILROAD
 CONSTRUCTION UNLESS NOTED
 BY ADDT.
 MAGMA AZ CONSTRUCTION IS
 SHOWN IN BOLD, ADDT WORK
 ITEMS ARE SCREENED.

REMOVE EXIST PAVT

ATTACHED TO AGREEMENT BETWEEN
 ARIZONA DEPARTMENT OF TRANSPORTATION
 AND
 MAGMA ARIZONA RAILROAD
 US 60, PINAL COUNTY, AZ

EXHIBIT 'E'

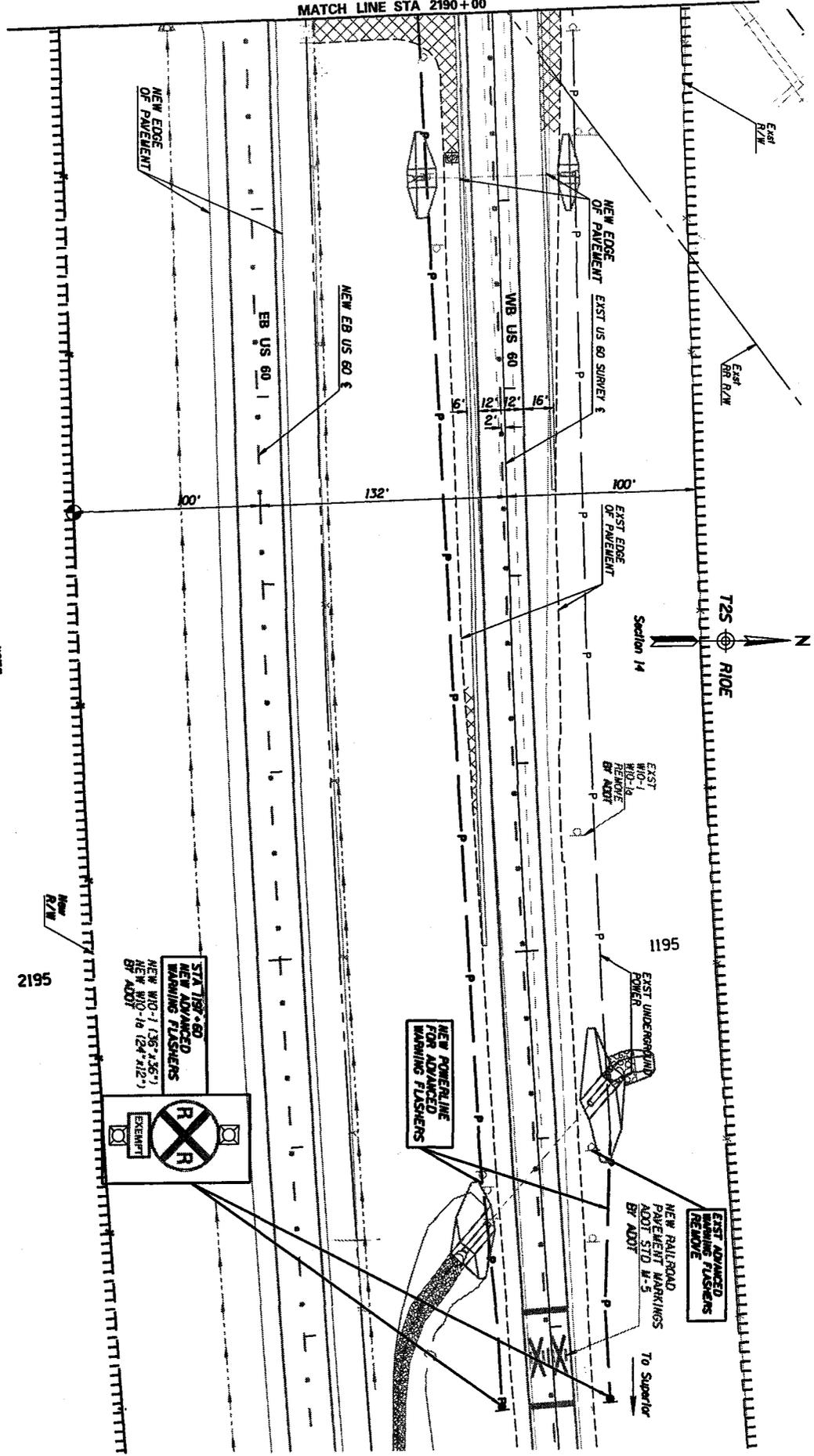
STA 2182+00
 NEW WID-1 (35°+35')
 NEW WID-1b (24°+32')
 BY ADDT

NEW RAILROAD
 PAVEMENT MARKINGS
 ADDT STD R-5
 BY ADDT

MATCH LINE STA 2182+60

SHEET 1 OF 4

MATCH LINE STA 2190+00



PIBUE & ASSOCIATES
 CONSULTING ENGINEERS

NOTE:
 ALL CONSTRUCTION NOTES REFER TO MAGNA AZ RAILROAD CONSTRUCTION UNLESS NOTED BY ADOT.
 MAGNA AZ CONSTRUCTION IS SHOWN IN BOLD. ADOT WORK ITEMS ARE SCREENED.

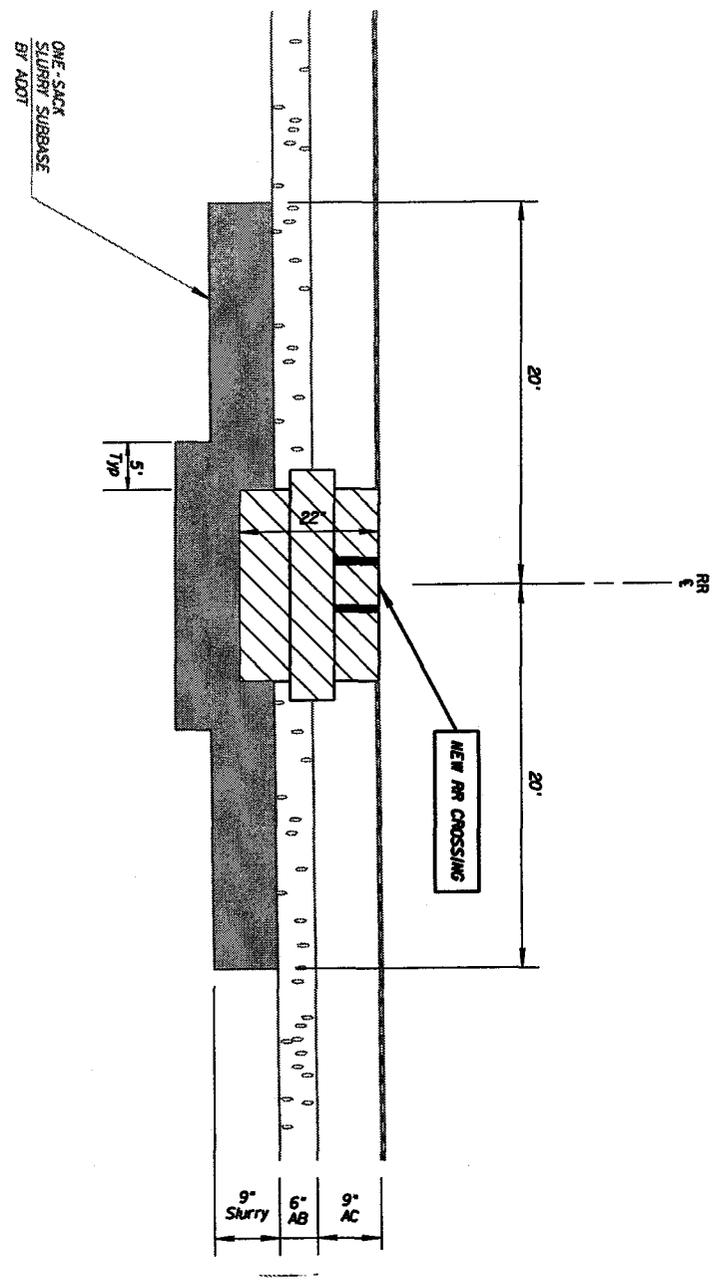
REMOVE EXIST PWMT BY ADOT

ATTACHED TO AGREEMENT BETWEEN
 ARIZONA DEPARTMENT OF TRANSPORTATION
 AND
 MAGNA ARIZONA RAILROAD
 US 60, PINAL COUNTY, AZ

EXHIBIT 'E'

ORRILE & ASSOCIATES
CONSULTING ENGINEERS

SECTION A-A



10/17/2008 JT-CORNER/NE-100-100-100-100-100-100

EXHIBIT 'E'
ATTACHED TO AGREEMENT BETWEEN
MAGNA ARIZONA RAILROAD
AND
ARIZONA DEPARTMENT OF TRANSPORTATION
US 60, PINAL COUNTY, AZ