

**ORIGINAL**



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1 **Stephen M. Kemp, City Attorney (010026)**  
2 **OFFICE OF THE CITY ATTORNEY RECEIVED**  
3 **CITY OF PEORIA**

OU

4 Cheryl A. Boswell, Assistant City Attorney (014737) 2007 JUN 15 4:41  
5 8401 W. Monroe Street, Room 280 AZ CORP COMMISSION  
6 Peoria, Arizona 85345 DOCKET CONTROL  
7 Telephone: (623) 773-7330  
8 Facsimile: (623) 773-7043  
9 Attorneys for City of Peoria

Arizona Corporation Commission  
**DOCKETED**  
JUN 15 2007

DOCKETED BY  
*AB* *NR*

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

DOCKET NO. RR-02635B-07-0222

**CERTIFICATION OF NOTICE**

20 IN THE MATTER OF THE APPLICATION OF )  
21 THE CITY OF PEORIA TO UPGRADE AN )  
22 EXISTING CROSSING OF THE BURLINGTON )  
23 NORTHERN AND SANTA FE RAILWAY AT )  
24 PEORIA AVENUE, IN THE CITY OF PEORIA, )  
25 MARICOPA COUNTY, ARIZONA, AT )  
26 AAR/DOT NO. 025-403-K. )

20 Pursuant to Procedural Order dated May 15, 2007, the City of Peoria, on May 18,  
21 2007, via Certified, Return-Receipt-Requested Mail, mailed copies of the (1) Procedural  
22 Order, (2) City of Peoria's May 18, 2007 letter with Grade Crossing Upgrade Map, (3) City  
23 of Peoria's April 4, 2007 Letter of Transmittal, (4) City of Peoria's April 2, 2007 letter to Mr.  
24 Chris Watson, of the Arizona Corporation Commission, (5) Grade Crossing Signal  
25 Installation Agreement, dated December 21, 2006, (6) Memorandum of Easement, dated  
26 March 7, 2007, (7) Easement Agreement, dated March 7, 2007, (8) Contractor Requirements,

1 and (9) Agreement between BNSF Railway Company and the Contractor, which are attached  
2 hereto as EXHIBIT "A", to the interested parties, listed below:

3 Utility Conflict Liaison  
4 Qwest Communications  
5 6350 S. Maple Ave., Room 125  
6 Tempe, AZ 85283

7 Mr. Steve Leslie  
8 Salt River Project  
9 P.O. Box 52025, XCT 341  
10 Phoenix, AZ 85072-2025

11 Mr. Tony Belford  
12 Southwest Fibernet  
13 2920 Directors Row  
14 Salt Lake City, UT 84104

15 Southwest Gas  
16 9 S. 43<sup>rd</sup> Ave., MS 420-586  
17 Phoenix, AZ 85009

18 Mr. Eric Brynolfson  
19 Viacom Outdoor  
20 2502 N. Black Canyon Hwy.  
21 Phoenix, AZ 85009

22 MCI-Worldcom  
23 Attn: OSP National Support/Invest  
24 Dept 42864, Loc 107  
25 2500 W. Glenville  
26 Richardson, TX 75082

Ms. Suzanne Holzer  
Cox Communications  
1550 W. Deer Valley Road  
Phoenix, AZ 85027

1 Mr. Bobby Garza  
2 Arizona Public Service  
3 P.O. Box 53999, MS 3162  
4 Phoenix, AZ 85072

5 John Syers  
6 Arizona Dept. of Transportation  
7 205 S. 17<sup>th</sup> Ave., MD 618E  
8 Phoenix, AZ 85007

9 Megan McIntyre  
10 Burlington Northern Santa Fe RR  
11 740 E. Carnegie Dr.  
12 San Bernardino, CA 92408

13 Robert Maurer  
14 SRP Irrigation  
15 P.O. Box 52025, MS PAB106  
16 Phoenix, AZ 85072-2025

17 David W. Zimbro  
18 Arizona Dept. of Transportation  
19 Phoenix Maint. District-Permits  
20 2140 W. Hilton Avenue  
21 Phoenix, AZ 85009-6988

22 As evidenced by the original Certified Return-Receipt documents (EXHIBIT "B"), the  
23 above-mentioned individuals received proper notice of receipt of the documents as required  
24 by the Arizona Corporation Commission's Procedural Order.

25 On May 24, 2007, the City of Peoria published in the Arizona Business Gazette the

26 Public Notice of the Hearing in the matter of the Application of the City of  
Peoria to Upgrade an existing Crossing of the Burlington Northern and  
Santa Fe Railway at Peoria Avenue, in the City of Peoria, Maricopa  
County, Arizona, at AAR/DOT No. 025-403-K, Docket No. RR-02635B-  
07-0222

(EXHIBIT "C"), as required by the Arizona Corporation Commission's Procedural Order.

1 DATED this 15<sup>TH</sup> day of JUNE, 2007.

2 OFFICE OF THE CITY ATTORNEY  
3 CITY OF PEORIA

4  
5 By:   
6 Cheryl A. Boswell, Assistant City Attorney  
7 Attorneys for City of Peoria

8 **ORIGINAL AND 13 COPIES** delivered  
9 this 15<sup>th</sup> day of June 2007, to:

10 Arizona Corporation Commission  
11 Commissions Docket Control  
12 1200 West Washington Street  
13 Room 108  
14 Phoenix, Arizona 85003

15 **COPY** of the foregoing mailed/delivered  
16 this 15<sup>th</sup> day of June 2007, to:

17 Marc E. Stern  
18 Administrative Law Judge  
19 Arizona Corporation Commission  
20 1200 West Washington Street  
21 Phoenix, Arizona 85003

22 Colleen Deines, Manager  
23 Public Projects  
24 BURLINGTON NORTHERN SANTA FE  
25 RAILWAY COMPANY  
26 740 East Carnegie Drive  
San Bernardino, California 92408

John Syers  
Railroad Engineering Coordinator  
ARIZONA DEPARTMENT OF TRANSPORTATION  
205 South 17<sup>th</sup> Avenue, Mail Drop 618E  
Phoenix, Arizona 85007

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David Gibson  
Traffic Records Section  
ARIZONA DEPARTMENT OF TRANSPORTATION  
206 South 17<sup>th</sup> Avenue, MD-064R  
Phoenix, Arizona 85007

Richard Costa, Associate Engineer  
Capital Engineering Division  
CITY OF PEORIA  
8401 West Monroe Street  
Peoria, Arizona 85345

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Brian Lehman, Chief  
Railroad Safety Section  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

ARIZONA REPORTING SERVICE, INC.  
2627 North Third Street, Suite Three  
Phoenix, Arizona 85004-1103

  
D. Gabbard

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION OF  
9 THE CITY OF PEORIA TO UPGRADE AN  
10 EXISTING CROSSING OF THE BURLINGTON  
11 NORTHERN AND SANTA FE RAILWAY AT  
12 PEORIA AVENUE, IN THE CITY OF PEORIA,  
13 MARICOPA COUNTY, ARIZONA, AT AAR/DOT  
14 NO. 025-403-K.

DOCKET NO. RR-02635B-07-0222

PROCEDURAL ORDER

15 **BY THE COMMISSION:**

16 On April 5, 2007, the City of Peoria ("City") filed with the Arizona Corporation Commission  
17 ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway  
18 Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at Peoria Avenue  
19 adjacent to Grand Avenue, in Peoria, Arizona, at AAR/DOT No. 025-403-K.

20 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern  
21 the preparation and conduct of this proceeding.

22 IT IS THEREFORE ORDERED that the request of the City shall be considered an application  
23 for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

24 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this  
25 proceeding.

26 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **June 28,**  
27 **2007, at 10:00 a.m.,** or as soon thereafter as is practical, at the Commission's offices, 1200 West  
28 Washington Street, Phoenix, Arizona.

IT IS FURTHER ORDERED that within five business days of receipt of this Procedural  
Order, **THE CITY OF PEORIA SHALL PROVIDE THE RAILROAD AND ANY OTHER**  
**MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application with a copy  
of the application and this Procedural Order by certified mail.

IT IS FURTHER ORDERED that Utilities Division, Railroad Safety Section ("Staff") shall

1 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of  
2 them with Docket Control on or before 4:00 p.m. on **June 12, 2007**.

3 **IT IS FURTHER ORDERED** that any **objections to the Staff Report and associated**  
4 **exhibits shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on June 22,**  
5 **2007.**

6 **IT IS FURTHER ORDERED** that **intervention** shall be in accordance with A.A.C. R14-3-  
7 105, except that all motions to intervene must be filed on or before **June 21, 2007**.

8 **IT IS FURTHER ORDERED** that City of Peoria shall provide public notice of the hearing in  
9 this matter, in the following form and style:

10 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION OF THE**  
11 **CITY OF PEORIA TO UPGRADE AN EXISTING CROSSING OF THE BURLINGTON**  
12 **NORTHERN AND SANTA FE RAILWAY AT PEORIA AVENUE, IN THE CITY OF**  
13 **PEORIA, MARICOPA COUNTY, ARIZONA, AT AAR/DOT NO. 025-403-K.**  
14 **DOCKET NO. RR-02635B-07-0222**

15 On April 5, 2007, the City of Peoria ("City") filed with the Arizona Corporation  
16 Commission ("Commission") an application for approval for the Burlington Northern  
17 and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the  
18 Railroad's tracks at Peoria Avenue adjacent to Grand Avenue, in Peoria, Arizona, at  
19 AAR/DOT No. 025-403-K.

20 The application is available for inspection during regular business hours at the offices  
21 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,  
22 and on the internet via the Commission website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket  
23 function.

24 The Commission will hold a hearing on this matter commencing on **June 28, 2007,**  
25 **at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Phoenix,  
26 Arizona. Public comments will be taken on the first day of the hearing.

27 The law provides for an open public hearing at which, under appropriate  
28 circumstances, interested parties may intervene. Intervention shall be permitted to  
any person entitled by law to intervene and having a direct and substantial interest in  
the matter. Persons desiring to intervene must file a written motion to intervene with  
the Commission, which motion should be sent to Applicant or its counsel and to all  
parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervener and of any party upon whom service of documents is to be made if different than the intervener.
2. A short statement of the proposed intervener's interest in the proceeding (e.g., a customer of Applicant, a shareholder of Applicant, a competitor, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

1 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except  
2 that all motions to intervene must be filed on or before June 21, 2007. The granting  
3 of intervention, among other things, entitles a party to present sworn evidence at  
4 hearing and to cross-examine other witnesses. However, failure to intervene will not  
5 preclude any customer from appearing at the hearing and making a statement on  
6 such customer's own behalf.

7 If you have any questions about this application, you may contact the applicant at  
8 [insert telephone number]. If you wish to file written comments on the application  
9 or want further information on intervention, you may write the Consumer Services  
10 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona  
11 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

12 The Commission does not discriminate on the basis of disability in admission to its  
13 public meetings. Persons with a disability may request a reasonable accommodation  
14 such as a sign language interpreter, as well as request this document in an alternative  
15 format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-  
16 3931, E-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should be made as early as possible to  
17 allow time to arrange the accommodation.

18 IT IS FURTHER ORDERED that City of Peoria shall cause the above notice to be published  
19 at least once in a newspaper of general circulation in the city where the crossing is located, with  
20 publication to be completed no later than June 7, 2007.

21 IT IS FURTHER ORDERED that notice shall be deemed complete upon the  
22 mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive  
23 the notice.

24 IT IS FURTHER ORDERED that the CITY OF PEORIA SHALL FILE  
25 CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS  
26 SOON AS PRACTICABLE after the mailing/publication of notice ordered herein has been  
27 completed.

28 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by  
ruling at hearing.

DATED this 15<sup>th</sup> day of May, 2007.

  
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

2



## City of Peoria *Engineering*

8401 West Monroe Street, Peoria, Arizona 85345  
Ph: 623-773-7210 Fax: 623-773-7211

May 18, 2007

### VIA Certified Mail

RE: Peoria Avenue/Grand Avenue Intersection Improvements  
Arizona Corporation Commission Application Letter  
City of Peoria Project No. P-0202  
Burlington Northern Santa Fe Railway Company Project # U.S. DOT Number 0245403K Phoenix  
Subdivision, Mile Post 179.7, Line Segment 7208

### To Whom It May Concern:

On April 11, 2007, the City of Peoria ("City") filed an Application with the Arizona Corporation Commission ("ACC") to widen the existing Burlington Northern Santa Fe Railway Company ("BNSF") Railroad Crossing for Peoria Avenue to include an additional right-turn only lane for westbound Peoria Avenue to northbound Grand Avenue (US 60). Based upon the City's traffic studies, the new right-turn lane will improve the operating efficiency for the intersection. Included with the proposed roadway widening work will be the addition of a roadway median separating eastbound and westbound traffic at the Railroad tracks, new sidewalks, sidewalk ramps, retaining wall, utility sleeves, and traffic signal improvements. Additionally, BNSF is requiring modifications to the existing BNSF Railroad flasher signals, gate arms, and railroad crossing warning devices to accommodate the work. I have enclosed an exhibit showing the proposed improvements identified in the City's Application to the ACC for your use.

As part of the application process, the ACC is requiring that the City provide BNSF and any other municipality or interested party, which may be affected by the City's Application, with notice of such (i.e., a copy of the Application and the Procedural Order). Enclosed please find both documents. If you have any questions, please feel free to contact me at (623) 773-7951 or via e-mail at [Richard.costa@peoriaaz.gov](mailto:Richard.costa@peoriaaz.gov).

Sincerely,

A handwritten signature in cursive script that reads "Richard Costa".

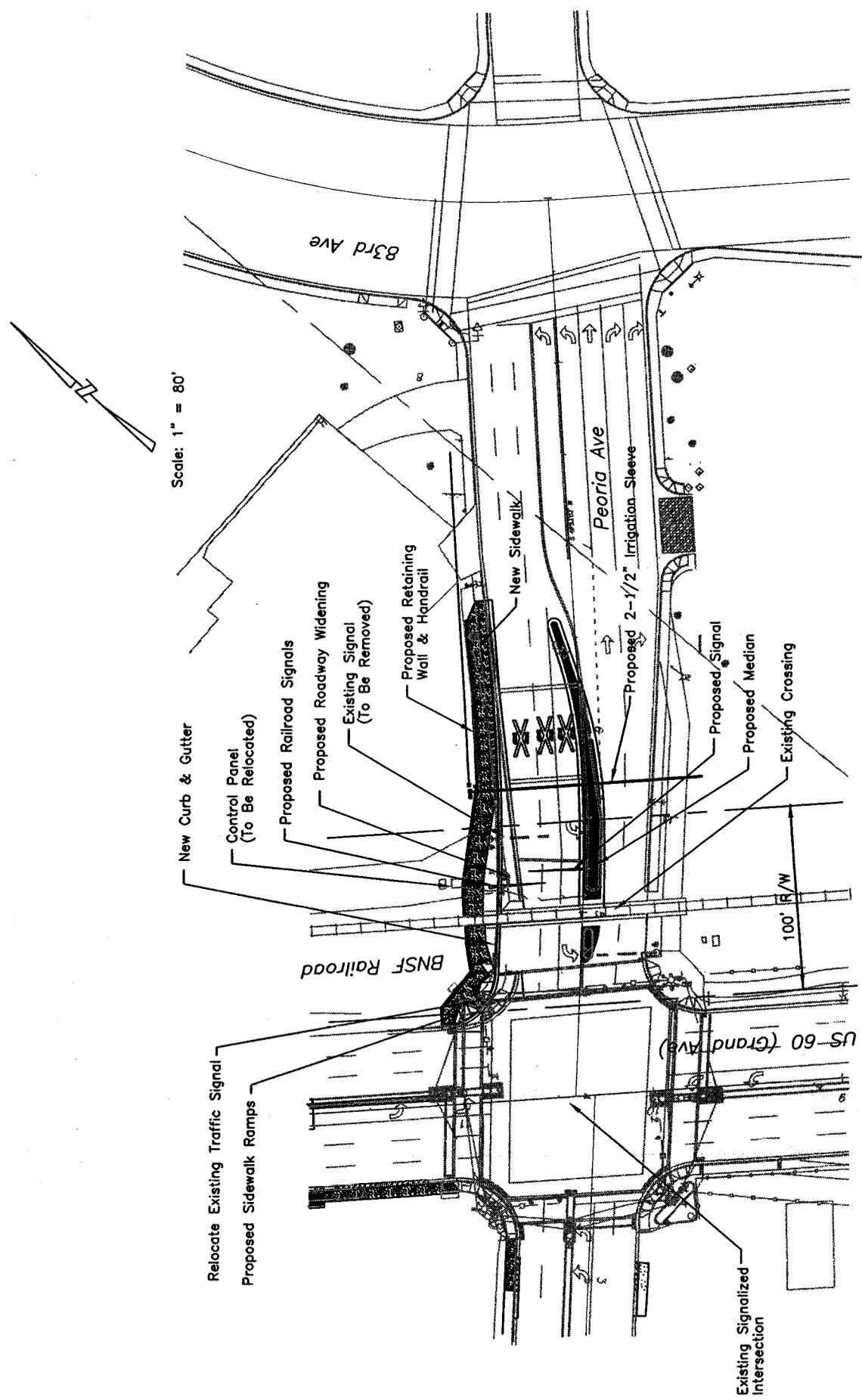
Richard Costa  
Associate Engineer

*Enclosures*

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**RAILROAD EXHIBIT  
GRADE CROSSING UPGRADE  
BNSF Railroad Main Track  
City of Peoria, AZ**



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**City Of Peoria**  
**Engineering Department**  
**Capital Improvement Projects**  
 8401 W. Monroe Street  
 Peoria, AZ 85345-6560  
 (623) 773-7210  
 FAX: (623) 773-7211

**LETTER OF TRANSMITTAL**

**TO: Arizona Corporation Commission**

**Office of Railroad Safety**

**1200 W. Washington St**

**Phoenix, Az. 85007**

**DATE: April 4, 2007**

**ENGINEERING  
NO. P-0202**

**ATTENTION: Chris Watson**

**RE: Peoria Avenue, BNSF Railroad Grade Crossing  
Application**

**WE ARE SENDING YOU the following items:**

- Application Letter (1-Original, 13 copies)
- Executed Agreement with BNSF Railroad (14 copies)
- Project Improvements Map (14 copies)

**Remarks: Chris, based upon the Arizona Corporation Commission procedure manual for requesting a new railroad crossing, attached are the required documents for application. The subject crossing being proposed is not necessarily a new crossing, but more of widening of an existing at grade crossing for Peoria Ave at BNSF Railroad here in the City of Peoria. I understand that the whole process can take from 60 to 90 days to complete. We will be expecting to receive a procedural order from an Administrative Law Judge, as outlined in your procedure manual, once application is made to the Commission. Please let me know as soon as possible if our initial application is incomplete so I can make any corrections.**

**COPY TO: Steve Cherwick, HDR; Mike Riggs, Carter Burgess; Megan McIntyre, BNSF Railroad**

**SIGNED:**

*Richard Costa*

4



## ENGINEERING DEPARTMENT

Capital Engineering Division  
8401 W. Monroe Street, Peoria, Arizona 85345  
Phone: (623) 773-7212  
Fax: (623) 773-7211

April 2, 2007

Mr. Chris Watson  
Arizona Corporation Commission  
Office of Railroad Safety  
1200 W. Washington St  
Phoenix, Az. 85007

RE: Peoria Ave /Grand Ave Intersection Improvements  
Application Letter  
City of Peoria Project No. P-0202,  
Burlington Northern Sante Fe Railway Company Project # U.S. DOT Number 0245403K,  
Phoenix Subdivision, Mile Post 179.7, Line Segment 7208

Dear Chris:

The City of Peoria is in the process of completing a final design package to widen a portion of the existing Peoria Avenue / Burlington Northern Sante Fe Railway Company (BNSF) railroad crossing to include provisions for a dedicated westbound Peoria Avenue right turn lane onto Grand Avenue. The crossing is located on Peoria Avenue adjacent to Grand Avenue (US60) within the City of Peoria, specifically at BNSF Railway mile post marker 179.7. The widening is required to help mitigate traffic congestion at the Peoria Avenue & Grand Avenue intersection by allowing motorists to use a dedicated right turn lane onto Grand Avenue and to improve the level of service of the intersection. Because this project is to widen an existing roadway crossing, and given existing adjacent roadway constraints (US60 - Grand Ave), a new grade separation was not a viable option. The current and future widened railroad crossing will be maintained by the Arizona Department of Transportation and the City of Peoria under separate agreements with BNSF, with exception to all BNSF owned crossing gates, flashers, signals, and associated equipment, which will be maintained by BNSF. New warning devices will include installation of constant warning device, flashers, cantilevers and stub gates. The roadway will also have new pavement markings and signage constructed in accordance with MUTCD standards. The project is fully funded by the City of Peoria Capital Improvements budget. It is our intention for this application letter to the Arizona Corporation Commission to begin the approval process for this crossing.

If you have any questions please feel free to contact me at (623) 773-7951.

Sincerely,

A handwritten signature in cursive script that reads "Richard Costa".

Richard Costa,  
Associate Engineer

C: Steve Cherwick, HDR  
Mike Riggs, Carter Burgess  
Megan McIntyre, BNSF Railroad

RC:db  
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**EXECUTED GRADE CROSSING AGREEMENT**

Peoria Avenue, Peoria, AZ  
U.S. DOT Number 025403K  
Phoenix Subdivision  
Mile Post 179.7  
Line Segment 7208

**GRADE CROSSING SIGNAL INSTALLATION AGREEMENT**

THIS ROADWAY IMPROVEMENT AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of December 21, 2006, (hereinafter called, "Effective Date") by and between the City of Peoria, a Political Subdivision of the State of Arizona/a Municipal Corporation, herein represented and acting through its City Council (hereinafter called, "AGENCY"), and BNSF Railway Company, a Delaware Corporation (hereinafter called, "RAILROAD");

**WITNESSETH:**

WHEREAS, in the interest of aiding vehicular travel and public safety, the AGENCY is undertaking a project to install railroad crossing signals and activation equipment known as Peoria Avenue;

WHEREAS, the project Peoria Avenue is located at U.S. DOT crossing 025403K as indicated on Exhibit "A", attached hereto and incorporated herein;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment at Peoria Avenue;

WHEREAS, the RAILROAD agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment described in the scope of work herein, and upon the terms and conditions set forth below.

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 in this agreement includes any and all work related to the installation of crossing signals and activation equipment at U.S. DOT crossing 025403K, more particularly described on Exhibits A and B attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

**ARTICLE II - RAILROAD OBLIGATIONS**

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

1. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing Signal Equipment at Peoria Avenue. The work will be performed at AGENCY's expense and in accordance with the MUTCD and the plans and specifications approved by and the Federal Highway Administration. The plans and specifications are attached to this Agreement as Exhibit "A" and incorporated herein.

L 60N 11606

2. A detailed estimate of RAILROAD'S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit "B" and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "B". 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 B 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.

3. RAILROAD will furnish all labor, materials, tools and equipment for the railroad portion of the work required for the construction of the Project.

4. The RAILROAD will, at AGENCY'S expense, dispose of all scrap from the RAILROAD'S work hereunder.

5. The RAILROAD will finalize and complete billing of all incurred costs under this Agreement no later than one (1) year following installation of the Crossing Signal Equipment.

### ARTICLE III - AGENCY OBLIGATIONS

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

1. AGENCY must perform, at AGENCY'S expense, the following work:

a) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD").

b) Installation of advance warning signs in accordance with the MUTCD.

2. The AGENCY will approve the location of the signals and signal bungalow prior to installation by RAILROAD.

3. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Crossing Signal Equipment must be paid by the AGENCY.

4. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY and the RAILROAD will mutually agree, in writing, as to the selection of a consultant and the applicable scope of work to be performed by such consultant. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.

5. During the installation of the Crossing Signal Equipment, RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit B. Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD 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 its credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, 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.

6. Intentionally left blank.

7. The AGENCY must have advanced railroad crossing warning signs and standard pavement markings in place at the crossing shown on Exhibit "A" (if the same are required by the MUTCD) prior to the acceptance of this

Project by the AGENCY. The AGENCY assumes full responsibility for the maintenance of advanced warning signs and pavement markings and agrees to hold harmless and indemnify the RAILROAD for any claims, damages or losses, in whole or in part, caused by or due to the AGENCY'S failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.

8. The AGENCY must give RAILROAD'S Manager of Public Projects written notice to proceed with the railroad portion of the 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.

#### **ARTICLE IV- JOINT OBLIGATIONS**

In consideration of the mutual covenants of the parties contained herein and the premises, the parties mutually agree as follows:

1. All cost records of the RAILROAD pertaining to the Project will be open to inspection and audit at any reasonable time by representatives of the AGENCY (including the legislative auditor and fiscal analyst for the AGENCY) for a period of one (1) year from the date of the final RAILROAD invoice under this Agreement.

Upon completion of the installation of the Crossing Signal Equipment, the RAILROAD, will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment and the new crossing surface in proper condition.

3. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

4. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

5. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

- a) In the event the RAILROAD'S sole negligence destroys or damages the Crossing Signal Equipment, RAILROAD must reimburse AGENCY for the costs to replace or repair such Crossing Signal Equipment.
- b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, AGENCY must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

6. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

7. This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

8. In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

L CON 11606

9. This Agreement may be signed in counterparts, any one of which will be deemed to be an original. The parties further agree that any facsimile copy of a party's signature is valid and binding to the same extent as an original signature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: *J. L. Hartley*

Printed Name: J. L. HARTLEY

Title: Dir. Public Projects

**CITY OF PEORIA**

By: *Terrence L. Ellis*

Printed Name: Terrence L. Ellis

Title: City Manager

ATTEST:

*Mary Jo Kief*  
Mary Jo Kief, City Clerk



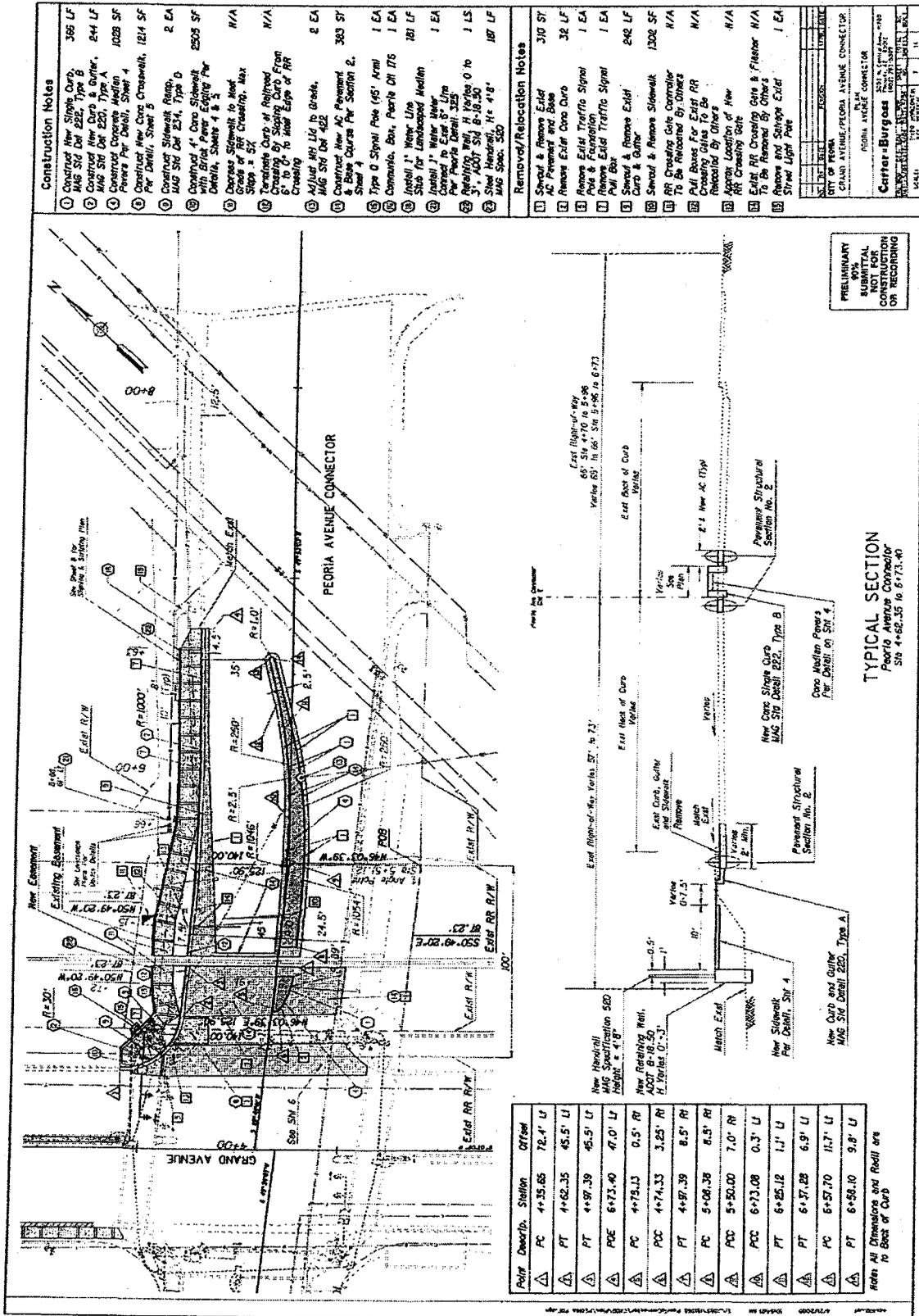
APPROVED AS TO FORM:

*Stephen M. Kemp*  
Stephen M. Kemp, City Attorney

L CON 11606

# Exhibit "A"

## Sht 1 of 2



- Construction Notes**
- 1 Construct New Slope Curb, 365 LF
  - 2 MAG STD Det 222, Type B, 844 LF
  - 3 Construct New Curb & Gutter, 844 LF
  - 4 MAG STD Det 220, Type A, 1028 SF
  - 5 Construct Concrete Median, 1028 SF
  - 6 Powers Per Detail, Sheet 4
  - 7 Construct New Curb Crosswalk, 1214 SF
  - 8 Per Detail, Sheet 5
  - 9 Construct Sidewalk Ramp, 2 EA
  - 10 MAG STD Det 234, Type D
  - 11 Construct 4' Curb Sidewalk with Blind Power Eductor Per Details, Sheets 4 & 5, 8505 SF
  - 12 Decrease Sidewalk to Meet Slope of AC Crossing, Max Slope = 4%
  - 13 Increase Width of Right-of-Way Crossing to Meet Edge of RR Crossing
  - 14 Adjust RR Lid to Grade, 2 EA
  - 15 MAG STD Det 422
  - 16 Construct New AC Pavement & Base Course Per Section 2, Sheet 4, 383 SF
  - 17 Type O Signal Pole (45' Hx 11' Dia), 1 EA
  - 18 Commando Box, Peoria Det 175, 1 EA
  - 19 Install 1" Water Line Median, 181 LF
  - 20 Install 1" Water Line Median Connected to East Side Line, 1 EA
  - 21 Per Peoria Detail 325
  - 22 Realign/Relocate H/Waves 0 to 3', ADOT STD B-18.30
  - 23 Steel Handrail, H = 4' x 1/2" x 1/2" Spec. 320

- Removal/Relocation Notes**
- 1 Remove and Replace 310 SF
  - 2 AC Pavement and Base
  - 3 Remove Existing Curb, 32 LF
  - 4 Remove Existing Traffic Signal Pole & Foundation
  - 5 Remove Existing Traffic Signal Pole Base
  - 6 Remove Existing Traffic Signal Pole Base
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PRELIMINARY  
80%  
SUBMIT FOR  
CONSTRUCTION  
OR RECORDING

**TYPICAL SECTION**  
Peoria Avenue Connector  
Sta 4+62.35 to 6+73.40

Point	Station	Offset
PC	4+35.65	72.4' U
PT	4+62.35	45.5' U
PVI	4+97.39	45.5' U
PDE	6+73.40	47.0' U
PC	4+73.40	0.5' R
PCC	4+73.33	3.25' R
PT	4+97.39	8.5' R
PC	5+08.38	8.5' R
PCC	5+50.00	7.0' R
PCC	6+73.08	0.3' U
PT	6+25.12	1.1' U
PT	6+17.28	6.9' U
PC	6+57.70	11.7' U
PT	6+58.10	9.8' U

Note: All Dimensions and Road are to Back of Curb

L CON 11606

# Exhibit "A"

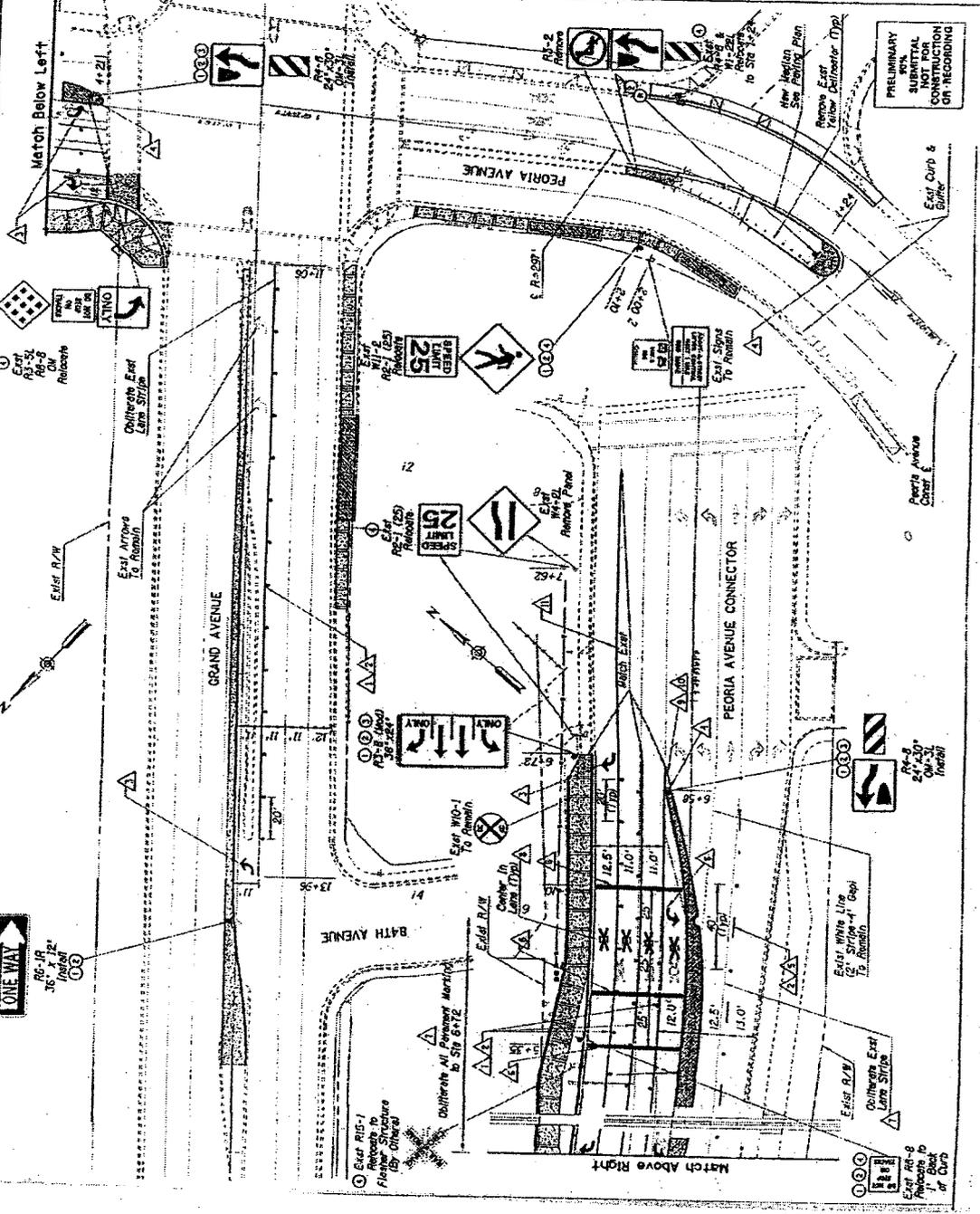
## Sht 2 of 2

Payment Marking Notes	
△ 8" White Line, 60 mil Thermoplastic (4" Equivalent Quantity)	TRR LF
△ Type O R/W	55 EA
△ Pavement Arrow (Type I Preferred)	5 EA
△ Pavement Arrow (Type I Preferred)	5 EA
△ Pavement Arrow (Type I Preferred)	5 EA
△ 4" White Line, 60 mil Thermoplastic (4" Equivalent Quantity)	87 LF
△ 4" White Line, 60 mil Thermoplastic (4" Equivalent Quantity)	372 LF
△ Pavement Arrow (Type I Preferred)	1 LS
△ Railroad Crossing Payment Marking (A007 R-10)	4 EA
△ 4" Yellow Line, 60 mil Thermoplastic	40 LF
△ Type O R/W	8 EA
△ 8" White Line, 2" Strip-Thermoplastic (4" Eqv)	125 LF

Signing Notes	
⊙ P-1 Post	81 LF
⊙ P-1 Foundation	7 EA
⊙ Sign Post/Obj not Marked	21 SF
⊙ Rebar Sign	1 LS

Site Sign Post Installation per City of Peoria Sid 13E-1, 13E-2.



L CON 11606

Exhibit "A-1"

Sht 1 of 2

Legal Description for Additional Easement  
Peoria Avenue Connector at Burlington Northern Santa Fe Railroad Crossing

Commencing at the Southeast Corner of Section 22, Township 3 North, Range 1 East, Gila and Salt River Meridian; thence North 1°33'39" West (bearing assumed for the purpose of this description) along the easterly line of said Section, 261.41 feet to a point in the southeasterly prolongation of the northeasterly line of that certain parcel of land described as Parcel 7 in deed to State of Arizona recorded in Book 331 of Deeds, Page 560, Records of said County; thence N 46°03'39" West along said southeasterly prolongation and said northeasterly line, 314.20 feet to the TRUE POINT OF BEGINNING for the parcel herein described; thence continuing North 46°03'39" West along said northeasterly line 14.10 feet; thence North 50°49'20" East, 87.23 feet to a point in the northeasterly line in the said 100-foot wide property; thence South 46°03'39" East along said northeasterly line, 14.10 feet; thence South 50°49'20" West, 87.23 feet to the point of beginning.

Said parcel contains an area of 1230 square feet (0.028 acres), more or less.

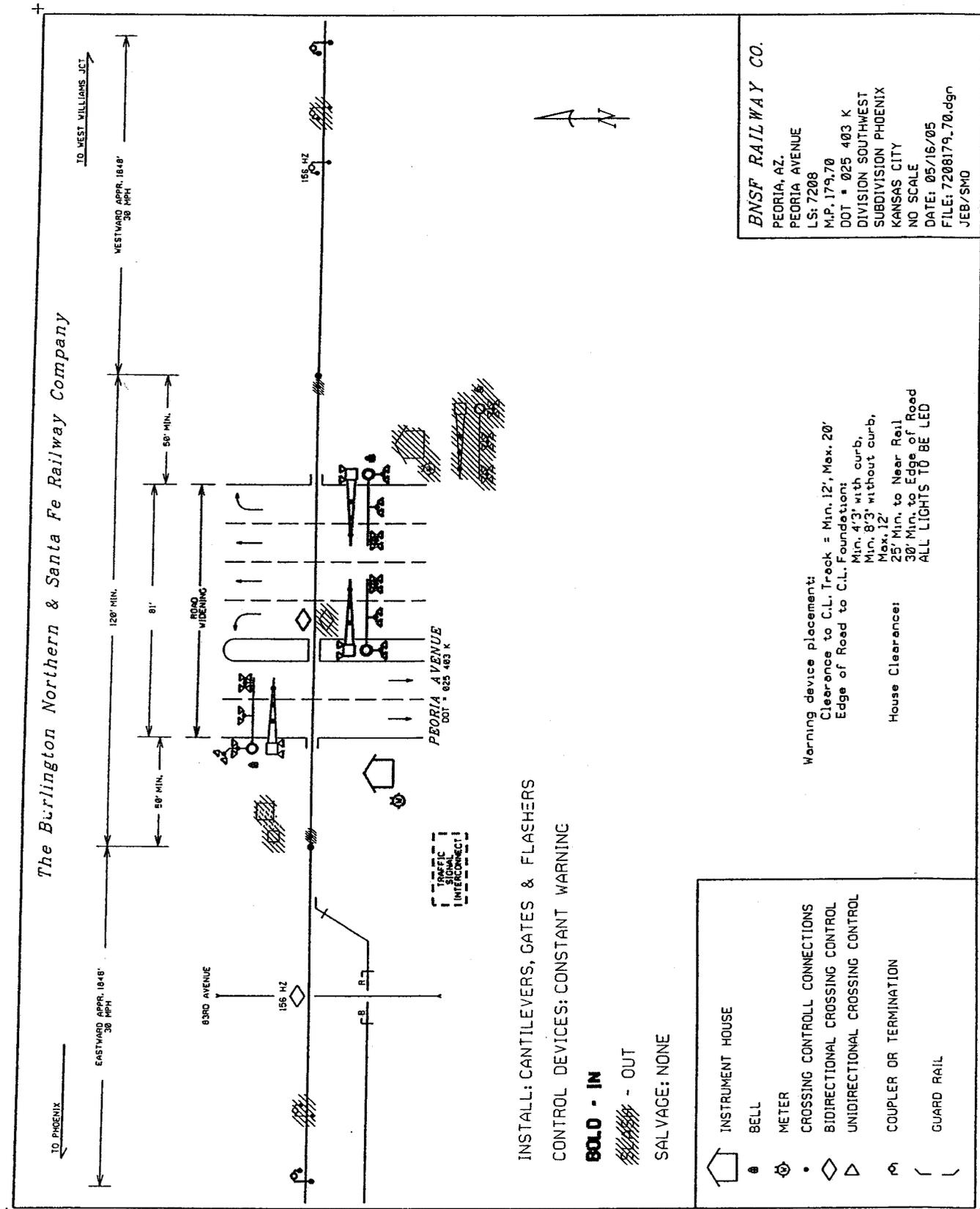


L CON 11606



**Exhibit "B"**

**Sht 1 of 4**



The Burlington Northern & Santa Fe Railway Company

**BNSF RAILWAY CO.**  
 PEORIA, AZ.  
 PEORIA AVENUE  
 LS: 7208  
 M.P. 179.70  
 DOT # 025 403 K  
 DIVISION SOUTHWEST  
 SUBDIVISION PHOENIX  
 KANSAS CITY  
 NO. SCALE  
 DATE: 05/16/05  
 FILE: 7208179.70.dgn  
 JEB/SMD

Warning device placement:  
 Clearance to C.L. Track = Min. 12', Max. 20'  
 Edge of Road to C.L. Foundations:  
 Min. 4'3" with curb,  
 Min. 8'3" without curb,  
 Max. 12'  
 House Clearance:  
 25' Min. to Near Rail  
 30' Min. to Edge of Road  
**ALL LIGHTS TO BE LED**

INSTALL: CANTILEVERS, GATES & FLASHERS  
 CONTROL DEVICES: CONSTANT WARNING

**BOLD - IN**

/// - OUT

SALVAGE: NONE

	INSTRUMENT HOUSE
	BELL
	METER
	CROSSING CONTROL CONNECTIONS
	BIDIRECTIONAL CROSSING CONTROL
	UNIDIRECTIONAL CROSSING CONTROL
	COUPLER OR TERMINATION
	GUARD RAIL

**L CON 11606**

**CONFIDENTIAL**

**EXHIBIT "B"**

**Sheet 2 - 4**

6

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
20070323387 03/19/2007 04:12  
ELECTRONIC RECORDING

When Recorded Return To:

City of Peoria  
8401 W. Monroe  
Peoria, AZ 85345

031971-5-1-1--  
miramontesa

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**Caption Heading: Memorandum of Easement**

**Do Not Remove**

**This is part of the official document**

**BNSF Crossing – Peoria Ave**

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this 7<sup>th</sup> day of MARCH, 2007, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and CITY OF PEORIA, an Arizona Municipal Corporation ("Grantee"), whose address for purposes of this instrument is 8401 W. Monroe Street, Peoria, Arizona 85345, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

## WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Maricopa County, Arizona as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated March 7, 2007, (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

L 60N 11606 A

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: [Signature]  
Name: Dalen E. Wintermute  
Title: Manager - Land Revenue Management

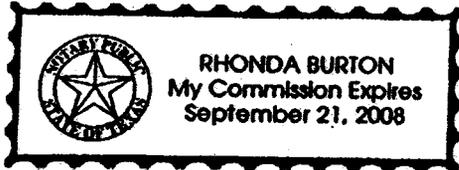
GRANTEE:

City of Peoria, AZ,

By: [Signature]  
Name: Terrence L. Ellis  
Title: City Manager

STATE OF TEXAS §  
  §  
COUNTY OF TARRANT §

This instrument was acknowledged before me on the 7<sup>th</sup> day of March, 2007, by Dalen E. Wintermute (name) as Manager - Land Revenue Management (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

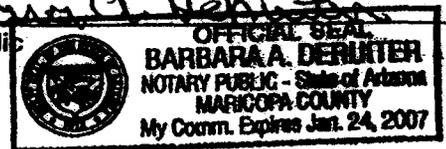


[Signature]  
Notary Public  
(Seal)  
My appointment expires: 9/21/2008

STATE OF Arizona §  
  §  
COUNTY OF Maricopa §

This instrument was acknowledged before me on the 16<sup>th</sup> day of November, 2006, by Terrence L. Ellis (name) as City Manager (title) of City of Peoria, an Arizona municipal corporation.

[Signature]  
Notary Public  
(Seal)  
My appointment expires: \_\_\_\_\_

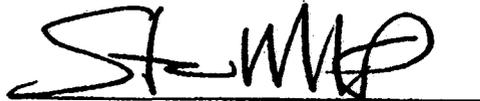


ATTEST:

  
Mary Jo Kief, City Clerk



APPROVED AS TO FORM:

  
Stephen M. Kemp, City Attorney

**Exhibit "A-1"****Legal Description for Additional Easement  
Peoria Avenue Connector at Burlington Northern Santa Fe Railroad Crossing**

Commencing at the Southeast Corner of Section 22, Township 3 North, Range 1 East, Gila and Salt River Meridian; thence North  $1^{\circ}33'39''$  West (bearing assumed for the purpose of this description) along the easterly line of said Section, 261.41 feet to a point in the southeasterly prolongation of the northeasterly line of that certain parcel of land described as Parcel 7 in deed to State of Arizona recorded in Book 331 of Deeds, Page 560, Records of said County; thence N  $46^{\circ}03'39''$  West along said southeasterly prologation and said northeasterly line, 314.20 feet to the TRUE POINT OF BEGINNING for the parcel herein described; thence continuing North  $46^{\circ}03'39''$  West along said northeasterly line 14.10 feet; thence North  $50^{\circ}49'20''$  East, 87.23 feet to a point in the northeasterly line in the said 100-foot wide property; thence South  $46^{\circ}03'39''$  East along said northeasterly line, 14.10 feet; thence South  $50^{\circ}49'20''$  West, 87.23 feet to the point of beginning.

Said parcel contains an area of 1230 square feet (0.028 acres), more or less.



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EXECUTED EASEMENT AGREEMENT

**④ COPY**

*Original to Don Bratton*

7

**EASEMENT AGREEMENT  
FOR PEORIA AVENUE AT GRADE CROSSING  
Attachment to C&M Agreement**

**THIS EASEMENT AGREEMENT FOR** the construction and maintenance of the Peoria Avenue at grade crossing ("**Easement Agreement**") is made and entered into as of the 7th day of MARCH 2006 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and the City of Peoria, an Arizona Municipal Corporation ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Peoria, County of Maricopa, State of Arizona, at Line Segment 7208, Mile Post 179.7, [Project # P-0202], as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of DECEMBER 21, 2006, concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

**NOW, THEREFORE**, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1     Granting of Easement.**

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purpose of constructing and maintaining an at grade vehicular roadway crossing as set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Subject to the terms and conditions set forth in this Agreement, Grantor agrees to grant to Grantee, and Grantee agrees to purchase and accept from Grantor, for the sum of Five Thousand Five Hundred and No/100 Dollars (\$5,500.00), a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;

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Law Department Approved

- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2** Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

**Section 3** No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4** Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5** Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor

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property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6** Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7** Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 7. Should Grantee not comply fully with the above-stated obligations of this Section 7, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 9.

**Section 8**      **Default and Termination.**

8.1      **Grantor's Performance Rights.** If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2      **Abandonment.** Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3      **Effect of Termination or Expiration.** Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9.**

8.4      **Non-exclusive Remedies.** The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

**Section 9**      **Surrender of Premises.**

9.1      **Removal of Improvements and Restoration.** Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a)      remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b)      repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c)      remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d)      leave the Premises in the condition which existed as of the Effective Date.

9.2      **Limited License for Entry.** If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10**      **Liens.** Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or

attributable to Taxes that are the responsibility of Grantee pursuant to Section 6. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 10 or any other section of this Easement Agreement.

**Section 11 Tax Exchange.** Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("Apex"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Texas without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

Law Department Approved

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

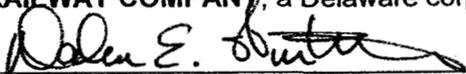
14.7 The terms of the C&M Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

14.8 Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$1,000.00 over and above the agreed upon Purchase Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

**BNSF RAILWAY COMPANY**, a Delaware corporation

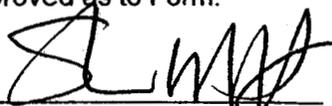
By:   
Name: Dalen E. Wintermute  
Title: Manager - Land Revenue Management

**GRANTEE:**

**CITY OF PEORIA**,  
An Arizona municipal corporation

By:   
Name: Terrence L. Ellis  
Title: City Manager

Approved as to Form:

  
Steve Kemp, City Attorney



Attest:

  
Mary Jo Kief, City Clerk

L 00N 11606 B

Law Department Approved

EXHIBIT "A"

Premises

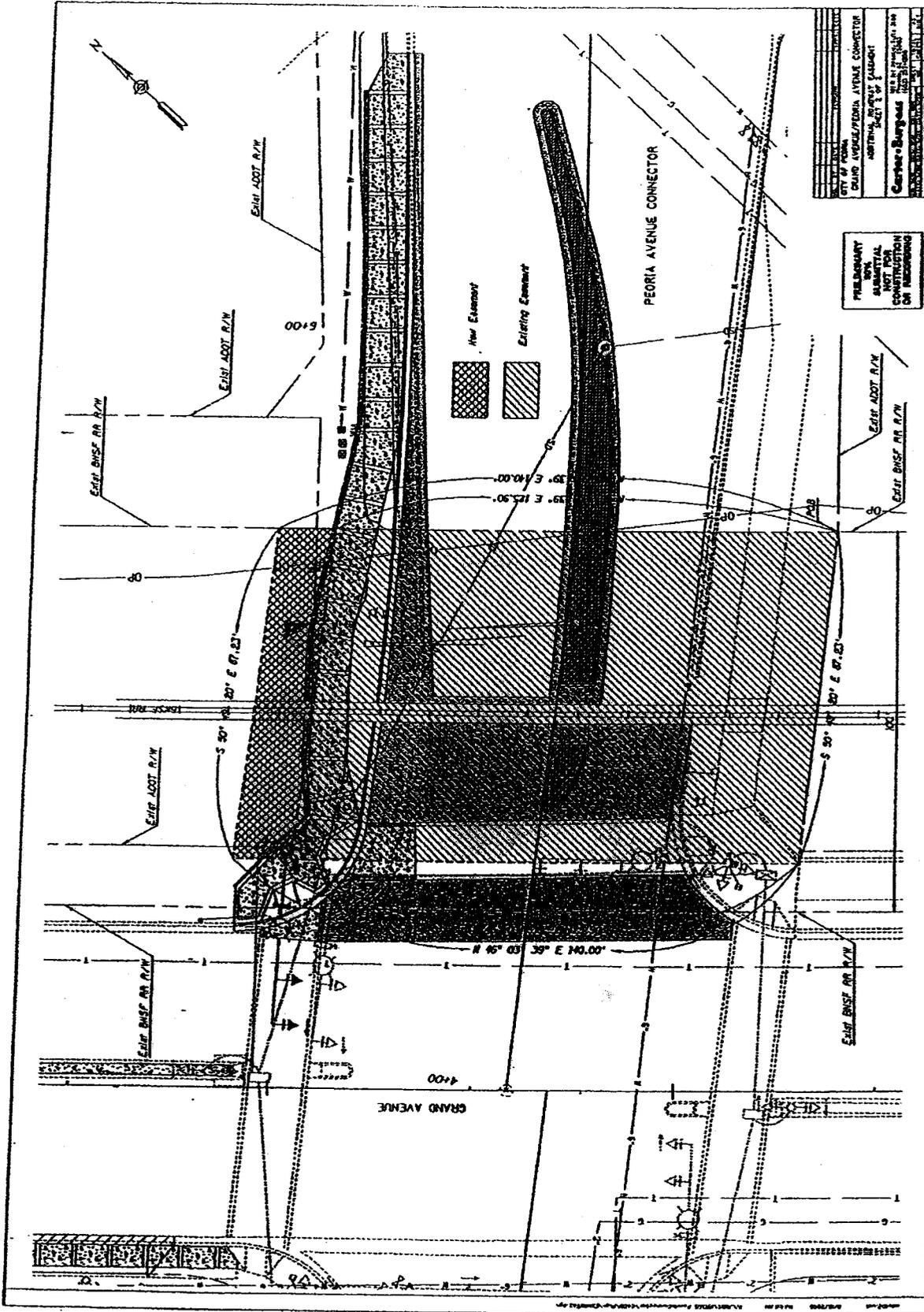
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Legal Description for Additional Easement  
Peoria Avenue Connector at Burlington Northern Santa Fe Railroad Crossing

Commencing at the Southeast Corner of Section 22, Township 3 North, Range 1 East, Gila and Salt River Meridian; thence North  $1^{\circ}33'39''$  West (bearing assumed for the purpose of this description) along the easterly line of said Section, 261.41 feet to a point in the southeasterly prolongation of the northeasterly line of that certain parcel of land described as Parcel 7 in deed to State of Arizona recorded in Book 331 of Deeds, Page 560, Records of said County; thence N  $46^{\circ}03'39''$  West along said southeasterly prolongation and said northeasterly line, 314.20 feet to the TRUE POINT OF BEGINNING for the parcel herein described; thence continuing North  $46^{\circ}03'39''$  West along said northeasterly line 14.10 feet; thence North  $50^{\circ}49'20''$  East, 87.23 feet to a point in the northeasterly line in the said 100-foot wide property; thence South  $46^{\circ}03'39''$  East along said northeasterly line, 14.10 feet; thence South  $50^{\circ}49'20''$  West, 87.23 feet to the point of beginning.

Said parcel contains an area of 1230 square feet (0.028 acres), more or less.





CITY OF PEORIA	DATE	BY	CHECKED
GRAND AVENUE/PEORIA AVENUE CONNECTOR			
ARTHWING, JAMES J. ASSOCIATES			
Carroll Burgess			
PEORIA, ILLINOIS			
PROJECT NO.			
DATE			

PRELIMINARY  
 PLAN  
 SUBJECT  
 NOT FOR  
 CONSTRUCTION  
 OR RECORDING

8

**EXHIBIT "C"**  
**CONTRACTOR REQUIREMENTS**

**1.01 General**

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of Peoria Avenue, DOT 025403K, Peoria, Arizona.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1".
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the City of Peoria and Railway's Manager Public Projects, telephone number (909)386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file DOT 025403K.
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

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## 1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.contractororientation.com](http://www.contractororientation.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

## 1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division General Manager at 505-864-4988 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'                      Horizontally from centerline of nearest track
  - 21'-6"                  Vertically above top of rail
  - 27'-0"                  Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0"                  Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
  - 30'-0"                  Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0"                  Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25'                      Horizontally from centerline of nearest track
  - 23'-3 1/2"              Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Peoria and must not be undertaken until approved in writing by the Railway, and until the City of Peoria has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City of Peoria for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across

the Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

#### **1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.contractororientation.com](http://www.contractororientation.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

#### **1.05 Protection of Railway Facilities and Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone 602-382-5803) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

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- **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the City of Peoria. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- **1.05.03d** The average train traffic on this route is 13 freight trains per 24-hour period at a timetable speed 25 MPH and 0 passenger trains at a timetable speed of NA MPH.

## **1.06 Contractor General Safety Requirements**

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be

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reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

## **1.07 Excavation**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (5505-767-6826). All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there

is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

### **1.08 Hazardous Waste, Substances and Material Reporting**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

### **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

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**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time:  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather  
(if non-Railway location)

5. Social Security #

6. Name (last, first, mi)

7. Address: Street: \_\_\_\_\_ City: \_\_\_\_\_ St. \_\_\_\_\_ Zip:

8. Date of Birth: \_\_\_\_\_ and/or Age \_\_\_\_\_ Gender:  
(if available)

9. (a) Injury: \_\_\_\_\_ (b) Body Part:  
(i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:

? First Aid Only

? Required Medical Treatment

? Other Medical Treatment

13. Dr. Name \_\_\_\_\_ 30. Date:

14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip:

15. Hospital Name:

16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip:

17. Diagnosis:

**FAX TO  
RAILWAY AT (817) 352-7595  
AND COPY TO  
RAILWAY ROADMASTER FAX**

**L 60N 11606**

9

**EXHIBIT "C-1"**

**Agreement  
Between  
BNSF RAILWAY COMPANY  
and the  
CONTRACTOR**

**BNSF RAILWAY COMPANY  
Attention: Manager Public Projects  
740 E Carnegie Drive  
San Bernardino, CA 92408  
909-386-4472  
909-386-4513 (FAX)**

**Railway File: DOT 025403K  
Agency Project: \_\_\_\_\_**

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 200\_, with City of Peoria, Arizona, for the performance of certain work in connection with the following project: Construction of Peoria Avenue, Peoria, Arizona. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Peoria (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

**Section 1. RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.**

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Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

### Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

### Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ◆ It is agreed that any workers' compensation exclusion does not apply to **Railroad** payments related to the Federal Employers Liability Act or a **Railroad Wage Continuation Program** or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ◆ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

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- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- ◆ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
  - ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- D. 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

**Other Requirements:**

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against **Railroad** for all claims and suits against **Railroad**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railroad** for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railroad** for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by **Railroad**. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and **Railroad** must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming **Railroad** as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of **Railroad**. If granted by **Railroad**, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all **Railroad** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to **Railroad** an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify **Railroad** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from **Railroad**, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT  
2500 Lou Menk Drive AOB-1  
Fort Worth, TX 76131-2828  
Fax: 817-352-7207

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Any insurance policy must be written by a reputable insurance company acceptable to *Railroad* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

#### Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, , including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

#### Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and

incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative (505-767-6826) four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

\_\_\_\_\_  
(Contractor)

**BNSF Railway Company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Manager Public Projects

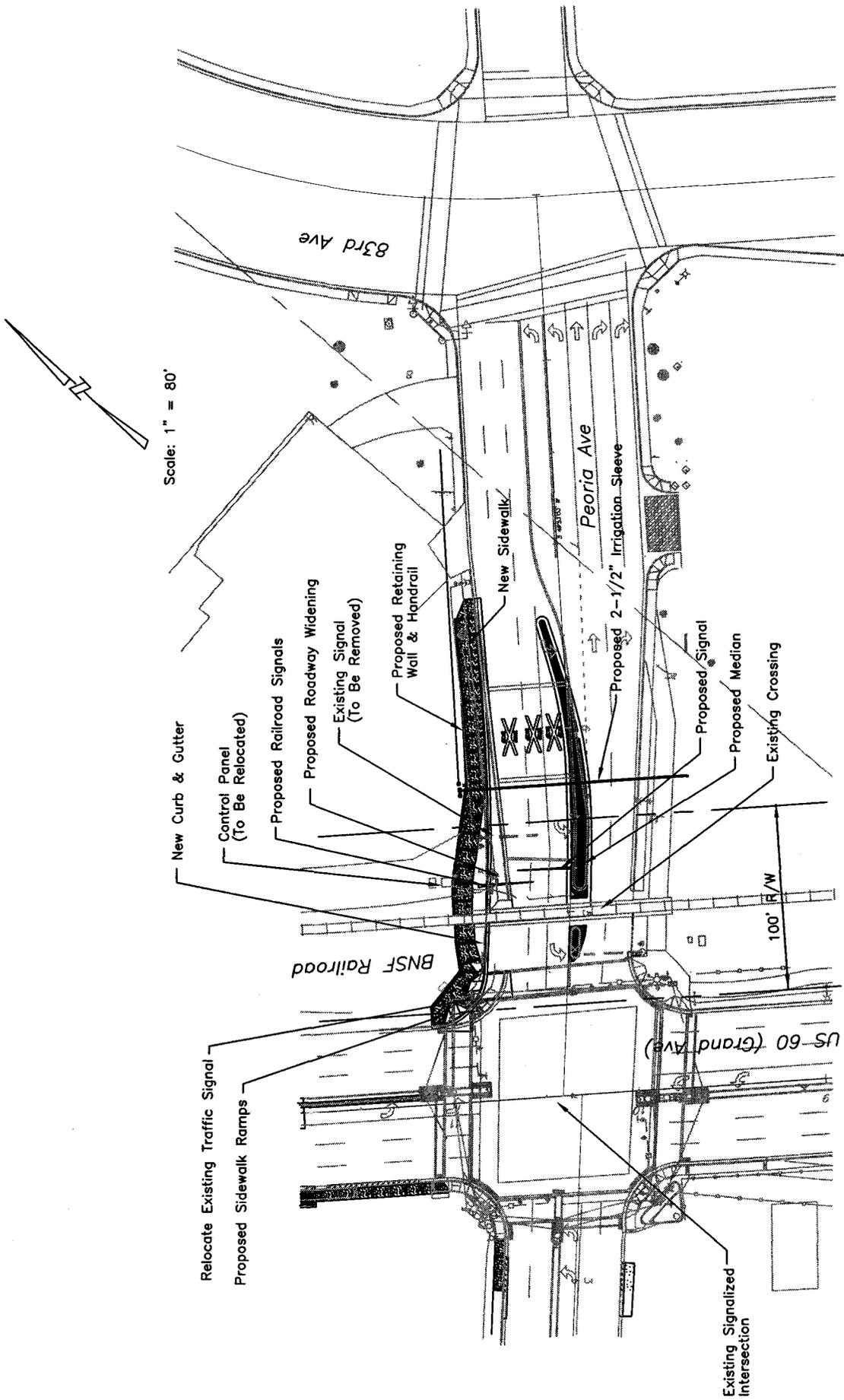
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_

Accepted and effective this \_\_\_\_ day of 20\_\_.

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

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# RAILROAD EXHIBIT GRADE CROSSING UPGRADE BNSF Railroad Main Track City of Peoria, AZ



B

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1.  Addressee's Address
2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Utility Conflict Liaison  
Qwest Communications  
6350 S. Maple Ave., Room 125  
Tempe, AZ 85283

4a. Article Number

7004 1350 0001 6191 9672

4b. Service Type

- Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery

5-21-07

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066

**DOMESTIC RETURN RECEIPT**

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1.  Addressee's Address
2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Steve Leslie  
Salt River Project  
P.O. Box 52025, XCT 341  
Phoenix, AZ 85072-2025

4a. Article Number

7004 1350 0001 6191 9627

4b. Service Type

- Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

7. Date of Delivery

MAY 21 2007

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066

**DOMESTIC RETURN RECEIPT**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tony Belford  
 Southwest Fibernet  
 2920 Directors Row  
 Salt Lake City, UT 84104

2. Article Number  
(Transfer from service label)

7003 1680 0007 3943 9778

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.4. Restricted Delivery? (Extra Fee)  Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Southwest Gas  
 9 S. 43<sup>rd</sup> Ave., MS 420-586  
 Phoenix, AZ 85009

2. Article Number  
(Transfer from service label)

7004 1350 0001 6191 9603

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**A. Signature  Agent  
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.4. Restricted Delivery? (Extra Fee)  Yes

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Eric Brynolfson  
 Viacom Outdoor  
 2502 N. Black Canyon Hwy.  
 Phoenix, AZ 85009

2. Article Number

(Transfer from service label)

7004 1350 0001 6191 9597

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x *Ronnie Jack* Agent Addressee

B. Received by (Printed Name)

Ronnie Jack

C. Date of Delivery

5/21

D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

2400 N. Black Cyn

3. Service Type

 Certified Mail  Express Mail Registered  Return Receipt for Merchandise Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MCI-Worldcom  
 Attn: OSP National Support/Invest  
 Dept 42864, Loc 107  
 2400 W. Glenville  
 Richardson, TX 75082

2. Article Number

(Transfer from service label)

7003 1680 0007 3943 9747

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x *Dee B...* Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

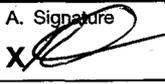
D. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

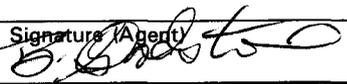
3. Service Type

 Certified Mail  Express Mail Registered  Return Receipt for Merchandise Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature  <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
	B. Received by (Printed Name) <i>F. Evans</i>	C. Date of Delivery <i>6/6</i>
1. Article Addressed to:  Ms. Suzanne Holzer Cox Communications 1550 W. Deer Valley Road Phoenix, AZ 85027	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number (Transfer from service label)	7003 1680 0007 3943 9785	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540		

<b>SENDER:</b> <ul style="list-style-type: none"> <li>Complete items 1 and/or 2 for additional services.</li> <li>Complete items 3, and 4a &amp; b.</li> <li>Print your name and address on the reverse of this form so that we can return this card to you.</li> <li>Attach this form to the front of the mailpiece, or on the back if space does not permit.</li> <li>Write "Return Receipt Requested" on the mailpiece below the article number.</li> <li>The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.</li> </ul>		I also wish to receive the following services (for an extra fee): <ol style="list-style-type: none"> <li><input type="checkbox"/> Addressee's Address</li> <li><input type="checkbox"/> Restricted Delivery</li> </ol> Consult postmaster for fee.	
3. Article Addressed to:  Mr. Bobby Garza Arizona Public Service P.O. Box 53999, MS 3162 Phoenix, AZ 85072		4. Article Number 7003 1680 0007 3943 9709	
5. Signature (Addressee)  6. Signature (Agent) 		4b. Service Type <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	
		7. Date of Delivery <i>MAY 20 2007</i>	
		8. Addressee's Address (Only if requested and fee is paid)	
PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066 <b>DOMESTIC RETURN RECEIPT</b>			

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

1.  Addressee's Address
2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

7003 1680 0007 3943 9716

John Syers  
Arizona Dept of Transportation  
205 S. 17<sup>th</sup> Ave., MD 618E  
Phoenix, AZ 85007

## 4b. Service Type

- Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

## 7. Date of Delivery

MAY 21 2007

5. Signature (Addressee)

*Larry Sanchez*

Larry Sanchez

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066

**DOMESTIC RETURN RECEIPT**

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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1.  Addressee's Address
2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

7003 1680 0007 3943 9723

Megan McIntyre  
Burlington Northern Santa Fe RR  
740 E. Carnegie Dr.  
San Bernardino, CA 92408

## 4b. Service Type

- Registered  Insured  
 Certified  COD  
 Express Mail  Return Receipt for Merchandise

## 7. Date of Delivery

5. Signature (Addressee)

6. Signature (Agent)

*S. DONOPOLSKI*  
S. DONOPOLSKI

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066

**DOMESTIC RETURN RECEIPT**

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

7003 1680 0007 3943 9730

Robert Maurer  
SRP Irrigation  
P.O. Box 52025, MS PAB106  
Phoenix, AZ 85072-2025

## 4b. Service Type

- Registered       Insured  
 Certified       COD  
 Express Mail       Return Receipt for Merchandise

7. Date of Delivery **MAY 21 2007**

5. Signature (Addressee)

*Will Hummel*

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, November 1990 ☆ U.S. GPO: 1991-287-066

**DOMESTIC RETURN RECEIPT**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

David W. Zimbrow  
Arizona Dept of Transportation  
Phoenix Maint. District-Permits  
2140 W. Hilton Ave.  
Phoenix, AZ 85009-6988

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*Rand Brook*       Agent  
 Addressee

B. Received by (Printed Name)

*R. BROOK*

C. Date of Delivery

*5-21-07*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Certified Mail       Express Mail  
 Registered       Return Receipt for Merchandise  
 Insured Mail       C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number

(Transfer from service label)

7003 1680 0007 3943 9761

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

C

# Arizona Business Gazette

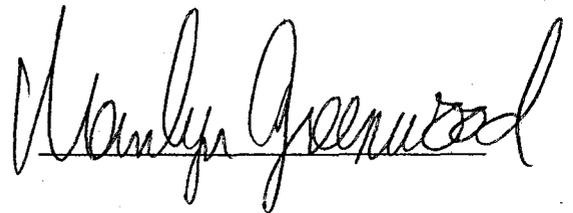
The business resource

PO BOX 194  
Phoenix, Arizona 85001-0194  
(602) 271-7300

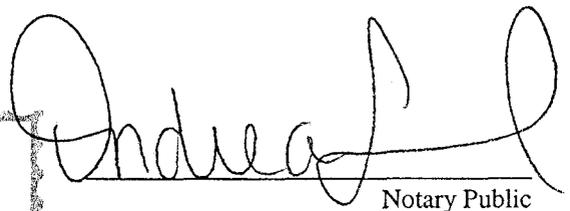
STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS.

Marilyn Greenwood, being first duly sworn, upon oath deposes and says: That she is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published weekly at Phoenix, Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates indicated.

05/24/2007



Sworn to before me this  
14th day of  
June A.D. 2007



Notary Public

 ANDREA SHEPPARD  
Notary Public - Arizona  
Maricopa County  
My Comm. Expires Aug 3, 2010



**PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION OF THE CITY OF PEORIA TO UP-GRADE AN EXISTING CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY AT PEORIA AVENUE, IN THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, AT AAR/DOT NO. 025-403-K. DOCKET NO. RR-026358-07-0222**

On April 5, 2007, the City of Peoria ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at Peoria Avenue adjacent to Grand Avenue, in Peoria, Arizona, at AAR/DOT No. 025-403-K.

The application is available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and on the internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-docket function.

The Commission will hold a hearing on the matter commencing on June 28, 2007, at 10:00 a.m. at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor, and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Applicant, a shareholder of Applicant, a competitor, etc.).

3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.R.C. 114-3-105, except that all motions to intervene must be filed on or before June 21, 2007. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at 623-773-7951. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000, or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931. E-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation.  
Published: May 24, 2007