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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION  
RECEIVED

2  
3 COMMISSIONERS

4 KRISTIN K. MAYES, Chairman  
5 GARY PIERCE  
6 PAUL NEWMAN  
7 SANDRA D. KENNEDY  
8 BOB STUMP

2009 AUG 28 P 4: 23

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

7 IN THE MATTER OF THE )  
8 APPLICATION OF THE UNION ) DOCKET NO. RR-03639A-08-0037  
9 PACIFIC RAILROAD TO ALTER )  
10 FOUR CROSSINGS OF THE UNION ) **NOTICE OF FILING FULLY**  
11 PACIFIC RAILROAD AT MARANA, ) **EXECUTED AGREEMENT**  
12 TANGERINE, CORTARO FARMS, AND INA ) **BETWEEN TOWN OF MARANA**  
13 ROADS IN THE TOWN OF MARANA, PIMA ) **AND UNION PACIFIC RAILROAD**  
14 COUNTY, ARIZONA ) **COMPANY**

15 Union Pacific Railroad Company ("Union Pacific") hereby gives notice that the Town of  
16 Marana and Union Pacific have entered into and executed the attached Agreement concerning the  
17 crossings shown on Exhibit A attached to the Agreement. Union Pacific is filing a copy of the  
18 fully executed Agreement in all dockets in which Union Pacific has sought the Commission's  
19 authority to add a second mainline track to the crossings shown on Exhibit A to the Agreement  
20 attached hereto.

21 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of August, 2009.

22 BEAUGUREAU, HANCOCK,  
23 STOLL & SCHWARTZ, P.C.  
24 By: Terrance L. Sims  
25 Anthony J. Hancock  
26 Terrance L. Sims  
302 East Coronado Road  
Phoenix, Arizona 85004  
Attorneys for Applicant Union  
Pacific Railroad Company

Arizona Corporation Commission  
DOCKETED  
AUG 28 2009  
DOCKETED BY MVT

1 ORIGINAL AND THIRTEEN COPIES  
2 of the foregoing filed this 28<sup>th</sup> day of  
3 August, 2009, with:

4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 COPY of the foregoing hand-delivered  
8 this 28<sup>th</sup> day of August, 2009, to:

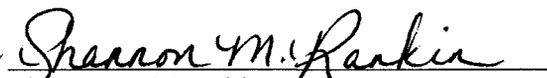
9 Charles H. Hains, Esq.  
10 Legal Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007  
14 Attorney for the Commission's  
15 Railroad Safety Section's Staff

16 COPY of the foregoing mailed this  
17 28<sup>th</sup> day of August, 2009, to:

18 Mr. Brian Lehman, Supervisor  
19 Mr. Chris Watson  
20 Railroad Safety Section  
21 Arizona Corporation Commission  
22 2200 North Central Avenue, #300  
23 Phoenix, Arizona 85004

24 Keith Brann  
25 Town Engineer, Assistant Director of Public Works  
26 City of Marana  
11555 W. Civic Center Drive  
Marana, AZ 85653-7007

Bruce D. Vana  
Engineer-Manager  
Utilities & Railroad Engineering Section  
Arizona Department of Transportation  
205 South 17<sup>th</sup> Avenue, Mail Drop 618E  
Phoenix, AZ 85007

  
Shannon M. Rankin

**AGREEMENT**

**Between  
TOWN OF MARANA, ARIZONA  
And  
UNION PACIFIC RAILROAD COMPANY**

This AGREEMENT ("Agreement") is entered into this 21<sup>st</sup> day of MAY, 2009, between TOWN OF MARANA, an Arizona municipal corporation, (hereinafter referred to as "Town") and the UNION PACIFIC RAILROAD COMPANY, a Delaware corporation operating a railroad in the State of Arizona (hereinafter referred to as "UPRR").

**RECITALS**

A. UPRR currently is constructing a second main track on and along the Gila Subdivision (Yuma-Tucson) main line in Arizona wherever there is currently only a single main line track. UPRR's project requires construction of a second main track through and across existing public at-grade crossings within the municipal limits of Town. A list of seven (7) existing public at-grade crossings of UPRR's Gila Subdivision main line located within the Town is attached hereto as Exhibit A and incorporated herein by reference.

B. UPRR and Town have met on several occasions to discuss UPRR's second main track construction project. UPRR has presented maps and other information to Town. Town understands the scope of the project as it may affect roadway at-grade crossings within its jurisdiction. Town has expressed concern about various matters related to UPRR's main line, including the second main track, as it passes through the Town.

C. UPRR wishes to obtain Town's general support and cooperation with respect to construction of the second main track through Town, particularly with respect to the at-grade crossings listed on Exhibit A. Town wishes to have UPRR address certain Town concerns about UPRR's installation of its second main track and future grade separations over the main line. UPRR and Town desire to enter into this binding Agreement to address Town's concerns and to secure Town's cooperation with respect to the construction of second main track across the at-grade crossings listed on Exhibit A.

**AGREEMENT**

NOW, THEREFORE, the parties hereto make and enter into the following binding agreement:

## UPRR OBLIGATIONS

1. Barnett Channel Project. UPRR shall cooperate with the Town's project to install the Barnett Channel, which is a planned waterway, which would cross under the UPRR main line at RR MP 963.4. The Town's plans for the Barnett Channel include construction of a bridge for the existing UPRR main line track over the proposed Barnett Channel, and the Town shall pay the cost of installation of such bridge. The plans for the Barnett Channel include a separate bridge structure for the second main track to be installed by UPRR, and UPRR shall pay the cost of installation of such bridge for the second main track. Provided, however, if the Town changes the plans for the Barnett Channel project in a manner which materially increases the size of the required bridges and the corresponding cost, then the Town shall pay the portion of the cost of such second bridge which reflects the increase over the projected cost based on the plans for the Barnett Channel project on the date hereof. If relocation of fiber optic lines on the UPRR right of way at this location is required as part of the installation of the UPRR second main track, then UPRR shall complete the relocation per existing UPRR agreements with third parties in a manner which will accommodate the plans for the Barnett Channel project. Provided, however, if relocation of the fiber optic lines on the UPRR right of way at this location is not required as part of the installation of UPRR's second main track, but is required as part of the installation of the Barnett Channel, then UPRR shall cooperate with the need for such relocation, but the cost of such relocation required for the Barnett Channel project shall be paid by the Town.

2. Crossing Permits. Subject to the terms of this Agreement, UPRR shall cooperate and reasonably expedite UPRR's review and consideration of utility right of way crossing applications, whether or not located in public rights of way, for private crossings located in the Town. Provided, however, such applications must comply with UPRR's then-current utility right of way crossing requirements and standards.

3. Maintenance of Structures. UPRR shall cooperate with Town on necessary inspections and maintenance of the structures now existing or subsequently installed at the crossings listed on Exhibit A or otherwise contemplated herein, in accordance with UPRR's then-current Right of Entry Agreement form and any other agreements between the parties.

4. New Tangerine Road. UPRR shall cooperate with Town on Town's development of a grade separation for New Tangerine Road over the UPRR right of way, including reasonably expediting review and approval of plans, specifications and agreements submitted by the Town, each of which must comply with UPRR's then-current requirements and standards. Provided, however, UPRR acknowledges its approval of the current plans for this grade separation, which plans include piers supporting the New Tangerine Road overpass located in the UPRR right of way. UPRR shall also support the Town's application to the Arizona Corporation Commission ("ACC") for the proposed grade separation project. Provided, however, the Town agrees that UPRR shall not be required to contribute any funding to the New Tangerine Road grade separation project unless the project includes the closure of an existing public at-

grade crossing somewhere in the Town. If the New Tangerine Road grade separation project includes the closure of an existing public at-grade crossing somewhere in the Town, and the Town receives federal funding for such grade separation project, then UPRR shall be liable for a five percent (5%) share of the cost of the theoretical structure under the provisions of the Federal Aid Policy Guide as contained in 23 CFR 646, Subpart B, Section 646.210(b)(1). Provided, if the Town does not receive federal funding for this grade separation project (and the grade separation project includes the closure of an existing public at-grade crossing), then UPRR's share of the cost of such theoretical structure shall be ten percent (10%).

5. Future Grade Separation Projects. UPRR shall, at the appropriate time, negotiate with Town in good faith the timing of UPRR's funding of its share of the cost of such theoretical structure for grade separation projects for the following locations:

Marana Road Overpass at RR MP 961.33  
Moore Road Overpass at RR MP [tbd]  
Avra Valley Road Overpass at RR MP [tbd]  
Twin Peaks Road Overpass at RR MP 970.18  
Cortaro Road Overpass at RR MP 972.01  
Ina Road Overpass at RR MP 974.03.

For each of these grade separations, the share of the cost which UPRR would be required to contribute would be ten percent (10%) for projects with no federal funding and five percent (5%) for such projects with federal funding, in each case as a percent of theoretical structure under the provisions of the Federal Aid Policy Guide as contained in 23 CFR 646, Subpart B, Section 646.210(b)(1), and in each case solely to the extent the grade separation project results in the closure of an existing public at-grade crossing. In each case, the share of the cost indicated as payable by UPRR is the maximum share of such cost which UPRR would be required to contribute. Except as provided in Section 6 below, in no event shall UPRR be required to contribute to any funding of a grade separation structure for which there is not a corresponding closure of an existing public at-grade crossing. The design plans for all grade separation projects shall comply with UPRR's then-current requirements and standards, including the requirement that the grade separation clear span the entire UPRR right of way, with no supporting piers or abutments in the UPRR right of way, unless UPRR agrees otherwise. For these grade separation projects to be eligible for the specifics of this section, they must begin while this agreement is effective. For the purposes of this agreement, begin is defined as a point in which a consultant is actively under contract for the design of construction documents, whether by the Town or another entity.

6. Tortolita Boulevard Grade Separation Project. Notwithstanding any language to the contrary in Section 5 above, UPRR shall contribute its five percent (5%) or ten percent (10%) share of the cost of the theoretical structure for the Town's Tortolita Boulevard grade separation project at RR MP 959.43, even though such project shall not result in the closure of an at-grade public crossing. As with other grade separation

projects noted above, UPRR's share shall be ten percent (10%) if no federal funding is obtained by the Town, or five percent (5%) if federal funding is obtained.

7. Subsequent Utility Relocations. UPRR shall communicate with Town regarding UPRR's second main track project so the Town shall have an opportunity to request that UPRR plan the relocation of any utilities in connection with the second main track project to depths which would accommodate future projects planned by the Town.

### **TOWN OBLIGATIONS**

8. Town Projects in UPRR Right of Way. In connection with all Town projects on UPRR right of way, Town shall execute UPRR's then-current form of Construction and Maintenance Agreement, License Agreement or Right of Entry Agreement, as applicable, in connection with such projects, including any grade separation projects for the crossings listed on Exhibit A or otherwise contemplated herein. Additionally, UPRR and Town anticipate that, for each of the particular projects contemplated in this Agreement, UPRR and Town shall enter into a more detailed agreement for each such particular project at the time the Town moves forward with such particular project, in each case consistent with the provisions set forth herein.

9. UPRR Second Main Track Project Cooperation.

(a) Town shall support UPRR's second main track project, including specifically supporting and approving construction of the second main track over and across each grade crossing listed on Exhibit A. Town shall provide one or more letters to or filings with the ACC advising the ACC that Town supports and approves UPRR's project applications for construction of a second main track across all public grade crossings within the jurisdiction of Town. If appropriate, Town will endeavor to appear at ACC hearings and public meetings to advise the ACC that it supports and approves UPRR's applications to the ACC for authority to alter the subject grade crossings by installing a second main track at grade.

(b) UPRR shall file this Agreement (when effective) with the ACC in support of each application it files for an additional main track over and across a public grade crossing listed on Exhibit A. Town agrees to provide statements confirming the effectiveness of this Agreement if so requested by the ACC or UPRR.

10. Permits. Upon request by UPRR, Town shall reasonably expedite review and approval of any permit applications by UPRR for its second main track project within the Town's jurisdiction, including promptly reviewing and approving any UPRR flood plain permit applications.

## OTHER

11. Open Communication. UPRR and Town shall use reasonable efforts to maintain open communications regarding their plans for subsequent expansion projects in the Town which materially impact their respective interests.

12. Effectiveness and Termination of Agreement.

(a) This Agreement shall be effective when signed by the parties hereto. The date of this Agreement shall be the date on which the last party signs it. Subject to Section 12(b) below, this Agreement shall extend for one term of fifteen (15) years, and within six (6) months prior or subsequent to the end of such fifteen (15) year term, either party hereto shall have the right to extend this Agreement for one additional ten (10) year period by sending written notice of such extension to the other party.

(b) UPRR may unilaterally terminate this Agreement without penalty or obligation to Town if the ACC rejects or disapproves, or attaches substantial adverse conditions to, any UPRR second main track project grade crossing alteration applications regarding public grade crossings within Town's jurisdiction as listed on Exhibit A, such as ordering a grade separation funded by UPRR at any public grade crossing within Town's jurisdiction as listed on Exhibit A in response to a UPRR application to construct an additional main track at grade over and across such crossing, unless such order contains terms which are substantially the same in form and substance as the terms of this Agreement.

13. Miscellaneous Provisions.

(a) This Agreement constitutes the entire agreement between UPRR and Town relating to this transaction. All prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of UPRR or Town. All rights and obligations of UPRR and Town set forth in this Agreement are integral parts of this Agreement. The consideration inducing UPRR and Town to enter into this Agreement includes all of the commitments by UPRR to Town, and by Town to UPRR, as set forth in this Agreement. The terms of this Agreement have been arrived at after considerable arms length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

(b) Except as specifically set forth in this Agreement, none of the parties hereto waives, releases or relinquishes any rights any such party may have with respect to construction of railroad trackage or facilities or with respect to grade separation or grade crossing projects in the State of Arizona.

(c) No modifications to this Agreement shall be effective unless in writing signed by all parties hereto.

(d) This Agreement shall be governed by Arizona law.

(e) Time is of the essence of this Agreement.

(f) If any term, covenant or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall remain valid and enforceable to the fullest extent permitted by law. Furthermore, any such invalidity or unenforceability of a term, covenant or provision of this Agreement shall not be deemed to affect the validity or effectiveness of the remaining terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

TOWN OF MARANA, ARIZONA

UNION PACIFIC RAILROAD COMPANY

By: *Ed Homer*  
Title: MAYOR

By: *John J. Horvath*  
Title: AVP ENGINEERING

Attest:

*Todd A. Ham*

Date: 5/21/2009

Attest:

*Maura Jay Hiner*

Date: 7-20-09

Approved as to Form

*Steve K...*  
Town Attorney

EXHIBIT A

Marana Road at RR MP 961.33  
Tangerine Road at RR MP 965.69  
Camino De Manana at RR MP 970.42  
Cortaro Farms Road at RR MP 972.01  
Massingale Road at RR MP 973.36  
Ina Road at RR MP 974.03  
Joiner Road at RR MP 975.6

**MARANA RESOLUTION NO. 2009-23**

RELATING TO TRANSPORTATION; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY CONCERNING DOUBLE-TRACKING THROUGH THE TOWN

WHEREAS Union Pacific Railroad Company seeks to construct a second main line railroad through Town of Marana; and

WHEREAS the Town and Union Pacific Railroad Company have prepared an agreement to address issues related to the double-tracking project and other matters relating to coordination and cooperation between the Town and the Railroad; and

WHEREAS the Mayor and Council of the Town of Marana find that the proposed agreement is in the best interests of the Town and public.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, as follows:

SECTION 1. The Agreement between the Town of Marana and Union Pacific Railroad Company attached as Exhibit A to and incorporated by this reference in this resolution is hereby approved, and the Mayor is hereby authorized to execute it for and on behalf of the Town of Marana.

SECTION 2. The Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of this agreement.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 21<sup>st</sup> day of May, 2009.



ATTEST:

*Jocelyn C. Bronson*  
FOR Jocelyn C. Bronson, Town Clerk

*Ed Honea*  
\_\_\_\_\_  
Mayor Ed Honea

APPROVED AS TO FORM:

*Frank Cassidy*  
\_\_\_\_\_  
Frank Cassidy, Town Attorney