



**ORIGINAL NEW APPLICATION**



0000112880

**Arizona Department of Transportation**

**Intermodal Transportation Division**

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janice K. Brewer  
Governor

Floyd Roehrich Jr.  
State Engineer

John S. Halikowski  
Director

May 25, 2010  
Arizona Corporation Commission

**DOCKETED**

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AZ DOT  
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Arizona Corporation Commission  
Office of Railroad Safety  
Attn: Chris Watson  
1200 W Washington Street  
Phoenix, AZ 85007

RE: Application to widen existing public at-grade railroad crossing  
Project: US 60, 99<sup>th</sup> Avenue to SR 303L  
Federal Project # ARRA-060-B(201)A  
ADOT Tracs # 060 MA 139 H6866 01C  
US 60 at Ennis Spur  
Burlington Northern Santa Fe Railway Crossing DOT 025 700D

RR-02635B-10-0234

Mr. Watson,

This application is being submitted to allow the Burlington Northern Santa Fe Railway (BNSF) to modify the existing crossing signals by relocating existing gate/flashing lights and cantilevered flashing lights from the median to the center of the roadway. BNSF will also install additional concrete crossing panels. This work was identified thru the ADOT project that will widen US 60 from the existing 4 lane to a 6 lane highway by widening to the inside of the highway.

A separate letter was sent to your office detailing the improvements that are part of this ADOT project and the adjacent US 60 widening project (83rd Avenue to 99<sup>th</sup> Avenue/ Docket RR-02635B-09-0529 ). Separate applications will be submitted to allow modification of the signals at Greenway Road (DOT 651 J), 111<sup>th</sup> Avenue (DOT 025 397 J), 107<sup>th</sup> Avenue (DOT 025 398 R) and 103<sup>rd</sup> Avenue (DOT 025 399 X).

**1. Project Location and Description**

This overall road project will widen approximately 12 miles of US 60 between 99<sup>th</sup> avenue and SR 303L from 4 lanes to 6 lanes. The roadway widening project is in construction and is expected to be finished by Winter 2011. No work is being done where existing railroad signals are in the way until BNSF is allowed to move the signals. This project is funded by the American Recovery and Reinvestment Act of 2009. This project was selected for ARRA funding by the Maricopa Association of Government in consultation with ADOT.

The US 60 crossing of Ennis spur is located in the upper 1/3 of the project. Widening will consist of expanding the road towards the inside of US 60 while leaving a small open median. All of this work is in the Town of El Mirage, Arizona. The project was identified to relieve existing and anticipated traffic congestion along US 60.

The work at the Ennis Spur Crossing will consist of relocating existing gate/flasher unit and cantilevered flashing units from their existing position to the median of ADOT right of way. All flashing lights will be upgraded to LED bulbs. BNSF will also install additional crossing panels. ADOT's Contractor will then build 1 new traffic lane in each direction.

Please note that DOT 025 700 D crossing number applies to the North bound, South bound US 60 mainline as well as the frontage road (3 crossing total). This project and this application will only modify the 2 US 60 crossings. The Frontage road crossing is not being modified at all.

## **2. Why the crossing is needed**

The 2007 *Design Concept Report(DCR)* and the *Grand Avenue Northwest Corridor Study, SR 303L to*

*SR 101L* (Maricopa Association of Governments, January 2003) identified US 60 as one of the primary urban arterial corridors serving Surprise, El Mirage, Youngtown, Maricopa County, Sun City and Sun City West. This same highway also links the Phoenix Metro area with US 93/ Las Vegas Nevada. The Corridor study found that without improvements this highway would be heavily congested by year 2025. The study found that widening US 60 to 6 lanes and incorporating intersection improvements would allow US 60 to serve at a satisfactory level of service.

This crossing is on the US 60, and thus would need to be widened to prevent a bottleneck from being formed and possibly leading to increased congestion and accident frequency.

Review of accident data between April 2002 thru March 2005 shows a total of 13 vehicle-vehicle accidents occurred on this segment of US 60, including 68 percent being rear end type accidents. According to the FRA website, there was 1 train-vehicle accidents at this crossing in 1981 resulting in injuries. It is not known where the accident occurred between the 3 crossings associated with the DOT number.

## **3. Construction Phasing**

The overall road project is in construction. BNSF has been authorized to install the new crossing surfaces. The ADOT Contractor has been notified that existing Railroad signals need to be protected in place. Due to the nature of the road work, the widened crossing would not be accessible to the traveling public until the end of the project.

Once an opinion and order is issued, BNSF will relocate the signal equipment within 12 to 15 months. No public traffic would be allowed on the newly widened portion of the crossing until the surface and signal work is in place.

## **4. Maintenance of the crossing**

BNSF will be responsible for installing and maintaining the crossing surface and signal equipment. ADOT will be responsible for constructing and maintaining the road approaches outside of BNSF responsibility.

## **5. Project Funding**

100% of the funding will be provided thru the Federal Highway Administration thru the American Recovery and Reinvestment Act and is expected to be completed by June 2011.

Costs are as follows:

BNSF Signal Cost	\$119,462.00
BNSF Surface Cost	<u>\$ 61,895.00</u>
Total Cost	\$181,357.00

6. Other information (based on typical Staff Data Requests):

1. Provide Average Daily Traffic Counts for each of the locations.  
Per 2007 Design Concept Report(DCR), ADT in 2008 was 39,100 vehicles per day both directions. Project 2030 ADT is 49,800 vehicles per day.
2. Please describe the current Level of Service (LOS) at each intersection.  
Per 2007 DCR pages 28 Table 4 and Page 34 Table 6, no LOS is available for US 60. However, the no-build alternative is projected to have a 40% drop in average speed over existing conditions.
3. Provide any traffic studies done by the road authorities for each area.  
Final Design Concept Report US 60 Grand Avenue SR 303L to 99<sup>th</sup> Avenue, January 2007  
Other studies (no copies available):
  - Regional Transportation Plan (Approved by MAG council in November 2003)
  - Grand Avenue Northwest Corridor Study January 2003
4. Provide the population of the City the crossing is located in. 2008 census:  
24,751 persons in El Mirage, Arizona.
5. Provide what warning devices are currently installed at the crossing.  
Both Directions: Median and road edge mounted gate/flashing light units and road edge mounted cantilevered flashing lights.
6. Provide distances in miles to the next public crossing on either side of the proposed project location. Are any of these grade separations?  
US 60 Frontage Road/El Mirage Road (DOT 025 700 D3) is not grade separated, parallels the US 60 and is 200 ft from this crossing  
Greenway Road (DOT 025 651 J) is 0.6 miles NW of this crossing and Thompson Ranch Road DOT 025 563 X) is 0.8 miles SE of this crossing. Neither crossing is grade separated.
7. How and why was grade separation not decided on at this time? Please provide any studies that were done to support these answers.  
Grade separation was not considered due to the complex nature of a grade separation in this narrow ADOT right of way and the need to maintain connectivity between Grand Avenue and Primrose Road. In addition, the very low volume of train traffic and the high cost of utility relocation, right of way acquisition and possible future expansion of El Mirage Road would need to be factored into a grade separation evaluation.
8. If this crossing was grade separated, provide a cost estimate of the project.  
Unknown costs. Estimate \$30,000,000++ due to the urbanized location and other issues. Other widening/ congestion mitigation projects would have to be delayed or cancelled to provide funding for a grade separation at this location.

9. Please describe what the surrounding areas are zoned for near this intersection. i.e. Are there going to be new housing developments, industrial parks etc.

Surrounding area zoned Residential to the south and Residential/ commercial to the North. BNSF vehicle offload facility is directly north of this crossing.

10. Please supply the following: number of daily train movements through the crossing, speed of the trains, and the type of movements being made (i.e. thru freight or switching). Is this a passenger train route?

No passenger traffic uses this crossing. Per FRA website, 2007 traffic was 1 train per day, thru train, no switching movements.

11. Please provide the names and locations of all schools (elementary, junior high and high school) within the area of the crossing.

- All Schools are in the Dysart School District
- Thompson Ranch Elementary School, 11800 Thompson Ranch Road; El Mirage, Az 85335. 623-523-8411 (located approximately 1 mile SE of the crossing)
- Surprise Elementary School, 12907 Greenway Road; El Mirage, Az 85335. 623-876-7400. Located approximately ½ mile NE of the crossing.

12. Please provide school bus route information concerning the crossing, including the number of times a day a school bus crosses this crossing.

Per Tracy Keily (tracy.keily@dysart.org), Bus Router for Dysart School District, 2 school buses use the US 60 Grand Avenue crossings and/or the frontage road crossing each day.

13. Please provide information about any hospitals in the area and whether the crossing is used extensively by emergency service vehicles.

Boswell Memorial Hospital, 10401 W Thunderbird Ave, 2 miles SE  
Sun Health Del E Webb Hospital, 14502 W Meeker Ave, 4 miles NW

14. Please provide total cost of the railroad improvements to each crossing. Cost described above.

15. Provide any information as to whether vehicles carrying hazardous materials utilize this crossing and the number of times a day they might cross it.

No factual data is available. However, due to the nature of US 60, numerous vehicles carrying hazardous materials use this crossing linking Phoenix / SR 101 area with the Northwest Valley.

16. Please provide the posted vehicular speed limit for the roadway.  
US 60 is posted at 45 mph.

17. Do any buses (other than school buses) utilize the crossing, and how many times a day do they cross the crossing.

Due to the nature of US 60, numerous buses use this crossing on a daily basis.

18. Please indicate whether any spur lines have been removed within the last three years inside a 10 mile radius of any crossings covered in this application. Please include the reason for the removal, date of the removal and whether an at-grade crossing or crossings were removed in order to remove the spur line.

No known data on spur closure in the last 10 years. Portion of the Ennis Spur leading into Luke Air Force Base was closed/ removed after 2001 (End of Webb Spur 6 rail miles away)

19. Please fill in the attached FHWA Grade Separation Guidelines Table, (from FHWA's 2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151) with a yes or no answer as to whether each item applies. Also, please provide all information to support your answers of yes or no (i.e. vehicle delay numbers, any calculations that were performed to get the answers).

Accident prediction based on FRA website 0.016. 2030 number calculated from FHWA Railroad Highway Grade Crossing formulas based on higher ADT, 6 lane traffic and came in at 0.093.

Traffic delay/day calculations summarized below.

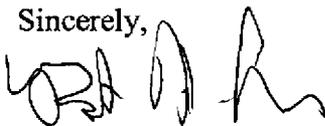
20. Based on the current single track configuration at the crossings specified by this application, please provide the current traffic blocking delay per train. Please indicate the time in which vehicular traffic is delayed (1) to allow the train to pass at a crossing and (2) due to trains stopped on the track for any purpose. The delay is measured from the point that the warning devices are activated at the crossing to the time after the train has cleared the crossing and the warning devices are reset.

Based on information from El Mirage and FRA data, train traffic causes 2 90 second delays and 1 3 minute delay per day.

Current ADT is 38,000 or 26 vehicles per minute. Future ADT is 48,000 ADT or 33 vehicles per minute

Using Current and expected ADT, this calculates as a 5.6 hr/vehicle-day delay now and 7.4hr/vehicle-day delay in 2030, well below the FHWA threshold of 40 hr/vehicle-day.

Sincerely,



Robert Travis, PE  
State Railroad Liaison  
Arizona Department of Transportation  
205 S 17th Ave, Room 357  
MD 618E  
Phoenix, AZ 85007  
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[rtravis@azdot.gov](mailto:rtravis@azdot.gov)

enclosures

cc: Marcel Benberou, ADOT  
Melvin Thomas, BNSF

Barry Brown, CEI/ ADOT  
Mohammad Zaid  
Robert Hansman, Dibble Engineering  
Jerry Horacek, City of El Mirage

### FHWA - GRADE SEPARATION GUIDELINES

Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following conditions exist: DOT 025 700 D/ US 60 at Ennis Spur in El Mirage, AZ					
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	NO			
The highway is otherwise designed to have full controlled access	Crossing meets the criteria by 2030	NO			
	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
AAOT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	NO			
	Crossing meets the criteria by 2030	NO			

# ARIZONA DEPARTMENT OF TRANSPORTATION

UTILITY AND RAILROAD ENGINEERING SECTION

RAILROAD AGREEMENT

Between

**THE STATE OF ARIZONA  
DEPARTMENT OF TRANSPORTATION**

and

**BNSF RAILWAY COMPANY**

**BNSF**

*October 19, 2009*

AGREEMENT No. 3112-08-BNSF

BNSF Cont No. \_\_\_\_\_

BNSF File No.025700D

AGREEMENT TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION TRACS No. 060 MA 139 H6866 01C

CONSTRUCTION PROJECT No. ARRA-060-B(201)A

FEDERAL AID PROJECT No. ARRA-060-B(201)A

HIGHWAY PHOENIX-WICKENBURG HIGHWAY (US 60)

LOCATION SR 303 to 99<sup>th</sup> Avenue Widening

DOT # 025 700 D

Railroad LS 7209 MP 0.20

**ADOT ORIGINAL**



This AGREEMENT is executed to be effective as of this 6<sup>th</sup> day of January 2018, (Year) ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("BNSF"), and the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "STATE". All lettered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

**RECITALS:**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of El Mirage, County of Maricopa, STATE of Arizona; BNSF and STATE entered into an Agreement dated 1919, which granted the right to construct, maintain and use the highway crossing of the BNSF right-of-way at-grade crossing, in Maricopa County, STATE of Arizona, now designated as AAR/DOT #025 700 D RRMP 0.20 Ennis Spur. The STATE desires to improve the existing Highway 60 at-grade crossing by widening the roadway and the associated at-grade crossing.

The parties hereto desire to express in writing their understanding and agreement with respect to the PROJECT and pursuant to which the STRUCTURE, crossing, connecting roadways and other improvements are to be constructed and maintained.

**DEFINITIONS:**

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. AGREEMENT TRACS NO. means the agreement accounting number utilized for ADOT Construction Project, which is 060 MA 139 H6866 01C
- C. CONSTRUCTION TRACS NO. means the roadway construction accounting number utilized for ADOT Construction Project, which is 060 M 139 H6866 01C.
- D. CONSTRUCTION PROJECT NO. ARRA 060-B(201)A
- E. EMERGENCY WORK by BNSF means work of an immediate nature required to maintain the integrity of rail service, restore railroad operations or for the protection of persons or BNSF property.
- F. PROJECT means all US 60 at-grade crossing work related to the construction of including, but not limited to, any and all roadway improvements, changes to railroad safety devices and appurtenances, temporary and permanent track work, fencing, communication, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, signing and striping, modification to utilities, right-of-way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on the STATE's PROJECT plans and specifications included herein by reference only. Additionally, temporary controls during construction must be in compliance with Section 8A-5, "Temporary Traffic Control Zones" of the Manual on Uniform Traffic Control Devices, Federal Highway Administration.

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G. RAILROAD WORK means pre-engineering, engineering, management, administration, design, preparation of plans, specifications and estimate, construction labor, materials and equipment called for in the AGREEMENT, and other work mutually agreed upon in the AGREEMENT, including approved changes in scope.

## **ARTICLE I – SCOPE OF WORK**

This project entails (*discuss the elements of the projects, crossings and structures involved*). Construction of the PROJECT shall include the following RAILROAD WORK performed by BNSF:

1. Acquire and Install additional concrete crossing surface, relocation of crossing signal equipment;
  - a. Other items shown in Exhibit A.
2. Preliminary engineering, design, contract preparation, and a project coordinator / inspector at STATE's expense as required in connection with the construction of the Project;
3. Flagging services will be paid by the STATE directly to BNSF thru separate agreement 3001-09-BNSF.
4. Procurement of materials, equipment and supplies necessary for the railroad work;

## **ARTICLE II – BNSF OBLIGATIONS**

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

1. BNSF will furnish all labor, materials, tools, and equipment for RAILROAD WORK required for the construction of the PROJECT, such RAILROAD WORK and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the PROJECT has not commenced within six (6) months following the Notice to Proceed, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this AGREEMENT as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this AGREEMENT upon written approval of STATE, which approval will not be unreasonably withheld.
2. BNSF will do all RAILROAD WORK set forth in Article II, Section 1 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
3. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the Project which BNSF deems is

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reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE and STATE agrees to fully reimburse BNSF for all such emergency work, of which BNSF will notify STATE at its earliest opportunity.

4. During the construction of the Project, BNSF will send STATE itemized monthly invoices detailing the costs of the RAILROAD WORK performed by BNSF under this Agreement. Except for the final invoice, monthly invoices shall only be submitted for costs of five hundred dollars (\$500) or more. Within one hundred and twenty (120) days after completion of RAILROAD WORK BNSF will send STATE a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 6 herein, STATE must pay the final invoice within sixty (60) days of the date of the final invoice. Invoices shall include a detailed cost run summary, the appropriate AGREEMENT and CONSTRUCTION TRACS numbers and shall be labeled as "Progress Invoice" or "Final Invoice" as the case may be. Costs shall be accumulated and invoiced in accordance with the Federal Acquisition regulations. The United States Code of Federal Regulations, 23 CFR 646 B is incorporated into this AGREEMENT by reference. Prior to submitting the first invoice to STATE, BNSF will notify STATE, in writing, of the actual BNSF construction start date. BNSF construction start date shall not be prior to receiving a Notice to Proceed from STATE. Prior to submitting the final invoice to STATE, BNSF agrees to notify STATE, in writing, of the actual BNSF construction completion date.
5. BNSF shall be given progress copies of the STATE's PROJECT plans at the 30%, 60% and 95% level, along with a copy of the final PS&E submittal by the STATE's Consultant. BNSF is encouraged to make comments to the STATE's PROJECT plan with regard to BNSF facilities.

### **ARTICLE III – STATE OBLIGATIONS**

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

1. STATE will furnish a pdf file of railroad-specific 100% plans and specifications (**in English Units**) for the PROJECT to BNSF. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this AGREEMENT and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the horizontal and vertical clearance standards for structures over BNSF track facilities, and such plans and specifications will not adversely impact BNSF operations. Such approval by BNSF shall not be deemed to mean that the plans and specifications, or construction, is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
2. STATE or STATE's Contractor will make any required application and obtain all required permits and approvals for the construction of the PROJECT.

3. STATE will provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the PROJECT.
4. STATE will acquire all rights-of-way necessary for the construction of the PROJECT.
5. STATE must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual for installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project. The most recent version of the Utility Accommodation Manual is available on the BNSF website.
6. STATE will construct the PROJECT as shown on the attached Exhibit A and do all work provided for in the plans and specifications for the PROJECT, except RAILROAD WORK that will be performed by BNSF hereunder. STATE will furnish all labor, materials, tools and equipment for the performance of STATE's work. The principal elements of STATE's work are as follows:
  - a. All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
  - b. Provide suitable drainage, both temporary and permanent as required for the project;
  - c. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
  - d. Installation of new road surface;
7. STATE's work will be performed by STATE or STATE's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
8. STATE will require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman, in accordance with the requirements of Exhibit C attached hereto. Additionally, STATE will require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property, or near BNSF tracks making reference to BNSF's file number 025700D.
9. STATE will include the following provisions in any contract with its contractor(s) performing work on said PROJECT:
  - (a) The contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies, and

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by field inspection. The contractor shall contact Blue Stake and have all underground facilities in the PROJECT area marked to verify their locations prior to performing any construction activity that may damage such facilities. The contractor will be responsible for contacting BNSF's Engineering Representative at (505)767-6826 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other lines (fiber optic, cable, communication or otherwise) may exist.

- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's Engineering Representative to stop construction at no cost to the STATE or BNSF until these items are completed.
- (c) The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor is hereby required to execute Exhibit C and Exhibit C-1 agreement with BNSF which will require the purchase of railroad protective insurance policy with endorsements requested within the Exhibit C and Exhibit C-1 and in addition, name the state of Arizona as an additional insured. The contractor shall also take full responsibility for their subcontractors through such Exhibit C and Exhibit C-1. The contractor shall further be caused to indemnify, defend and hold harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). To the extent permitted by law; **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

10. STATE will incorporate in each prime contract for construction of the PROJECT, or the specifications therefore, (i) the provisions set forth in Article III, Sections 7,

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8, 9, and 11; (ii) the provisions set forth in Article IV, Sections 3 and 4; and (iii) the provisions set forth in Exhibit C and Exhibit C-1 attached hereto and by reference made a part hereof.

11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by STATE for the PROJECT will be pursuant to a contract or contracts to be let by STATE, and all such contracts will include the following:
- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
  - (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
  - (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work will have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and (d) If the STATE's contractor defaults his obligation under his contract with the STATE for any reason his replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor. (d) To facilitate scheduling for the Project, STATE shall have its contractor give BNSF's representative at 602-382-5803 thirty (30) days advance notice of the proposed times and dates for work windows. BNSF and STATE's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows.
13. If the STATE's contractor defaults his obligation under his contract with the STATE for any reason their replacement shall be responsible to comply with all related obligations to BNSF as contained in the original contract between the STATE and the first contractor.
14. STATE will give BNSF's Manager of Public Projects written Notice to Proceed with the RAILROAD WORK after receipt by the STATE of the Opinion and Order from the Arizona Corporation Commission. BNSF will not begin the RAILROAD WORK (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from STATE.
15. STATE agrees to reimburse BNSF for work of an emergency nature caused by STATE or STATE's contractor in connection with the PROJECT which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of STATE; however, STATE reserves the right to review the cause of said work to determine payment responsibilities. If the parties cannot agree on the responsible party of the damages, the matter will be resolved through arbitration pursuant to A.R.S. Section 12-1518.

16. BNSF may charge STATE for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the PROJECT. Such charges will be considered part of the actual cost of the PROJECT, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
17. **TO THE FULLEST EXTENT PERMITTED BY LAW, STATE HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM (I) THE STATES SOLE USE AND/OR OCCUPANCY OF THE CONSTRUCTION SITE, (II) THE USE, OCCUPANCY OR PRESENCE OF STATE'S CONTRACTORS, TO THE EXTENT THE STATE HAS BREACHED THIS AGREEMENT BY ALLOWING CONTRACTOR AGENTS ONTO RAILROAD PROPERTY WITHOUT SUCH CONTRACTOR AGENTS HAVING AN EXHIBIT C OR EXHIBIT C-1 AGREEMENT EXECUTED IN THE FORM ATTACHED AS EXHIBITS HERETO SIGNED WITH THE RAILROAD, (III) THE SOLE ACTS OR OMISSIONS OF STATE, ITS, OFFICERS OR EMPLOYEES IN, ON, OR ABOUT THE CONSTRUCTION SITE, (V) STATE'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (VI) ANY RIGHTS OR INTERESTS GRANTED TO STATE PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VII) STATE'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY STATE, OR (VIII) AN INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF STATE, ITS OFFICERS OR EMPLOYEES BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER.**

#### **ARTICLE IV – JOINT OBLIGATIONS**

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

1. All work contemplated in this AGREEMENT will be performed in a good and workmanlike manner and each portion will be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. STATE will require its contractor(s) to reasonably adhere to the PROJECT's construction schedule for all PROJECT work. The parties hereto mutually agree

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that BNSF's failure to complete the RAILROAD WORK in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this AGREEMENT by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the RAILROAD WORK in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF-owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct, or indirect, consequences or costs resulting from any such reallocation will not constitute a breach of this AGREEMENT by BNSF. Nevertheless, BNSF shall endeavor to utilize all means at its disposal to comply with the original schedule.

3. BNSF will have the right to stop construction work on the PROJECT if any of the following events take place: (i) STATE (or any of its contractors) performs the PROJECT work in a manner contrary to the plans and specifications approved by BNSF; (ii) STATE (or any of its contractors), in BNSF's opinion, executes the PROJECT work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the PROJECT. (iv) STATE fails to pay BNSF for the Temporary Construction Easement and the Permanent Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until valid acceptable insurance has been delivered to and accepted by BNSF. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. Prior to ordering the stoppage of work BNSF shall communicate such deficiencies to the STATE's Engineer and attempt to seek corrections to such deficiencies. In the event that BNSF desires to stop construction work on the PROJECT, BNSF agrees to notify the STATE's Engineer in writing.
  
4. STATE shall have the right to request that any BNSF Contractor or any employee of a BNSF Contractor who performs work within STATE right of way and which affects STATE's operations or facilities, be removed from STATE right of way for incompetence, neglect of duty, unsafe conduct or misconduct. In the event BNSF or its Contractor elects not to honor such request, STATE may stop the work within its right of way until the matter has been fully resolved to STATE's satisfaction. Before such action is taken the matter will be attempted to be resolved through the STATE's Engineer if the problem occurs during the initial construction or through the District Permits Supervisor if the problem occurs during a subsequent maintenance effort. STATE shall make the final determination. If the termination of RAILROAD WORK should result in delay claims by ADOT's Contractor, these costs shall be passed to BNSF for payment. For all RAILROAD WORK or subsequent maintenance work conducted by BNSF within STATE right of way BNSF shall acquire a permit for such activity from the

applicable STATE District Permits Office. BNSF shall meet and comply with all provisions of said permit.

5. STATE will supervise and inspect the operations of all STATE contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this AGREEMENT and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by STATE personnel at any time during construction of the PROJECT, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the PROJECT will not proceed until STATE corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the STATE's Engineer for appropriate corrective action.
6. Pursuant to this section and Article II, Section 2 herein, STATE will, out of funds made available to it for the construction of the PROJECT, reimburse BNSF in full for the actual costs of all work performed by BNSF under this AGREEMENT.
7. All expenses detailed in statements sent to STATE pursuant to Article II, Section 2 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this AGREEMENT by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 1 herein are part of the costs of the PROJECT even though such work may have preceded the date of this AGREEMENT and are included in the overhead rates of BNSF.
8. The parties mutually agree that no construction activities for the PROJECT, nor future maintenance of the AT-GRADE CROSSING once completed, that by mutual agreement of the parties have the potential to impact BNSF facilities and operations within BNSF's right-of-way, will be permitted during the fourth quarter of each calendar year. EMERGENCY WORK will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: (800-832-5452)). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.
9. In addition to the terms and conditions set forth elsewhere in this AGREEMENT, BNSF and STATE agree to the following terms upon completion of construction of the PROJECT:
  - (a) STATE will own and maintain, at its sole cost and expense, the at-grade crossing, the highway approaches and appurtenances thereto including lighting and drainage features. BNSF will maintain the roadway within two (2) feet of the rail. BNSF will notify STATE Traffic Operations center (602-712-6591) as early as possible if emergency repairs are needed to STATE facilities. Should BNSF discover deficiencies in the AT-GRADE CROSSING that BNSF feels pose a potential hazard to BNSF facilities, BNSF must contact STATE to resolve the deficiency as soon as possible.
  - (b) Before entering upon BNSF's right-of-way for maintenance purposes, by STATE personnel, STATE shall notify BNSF's Road master. Prior written

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authorization by BNSF's Manager Public Projects will be required for entry into the BNSF right of way during the fourth quarter of each calendar year. STATE is not obligated to execute BNSF's Exhibit C and Exhibit C-1. STATE will abide by the flagging safety requirements set forth in Exhibit C. If work is contracted, STATE will require its prime contractor(s) to comply with the obligations in favor of BNSF set forth in Exhibit C and Exhibit C-1, as may be revised from time to time.

- (c) It is expressly understood by STATE and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (e) If the State performs (i) alterations or modifications to the AT-GRADE CROSSING, or (ii) any maintenance or other work on the AT-GRADE CROSSING with heavy tools, equipment or machinery at ground surface level horizontally within fifty (50) feet of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the AT-GRADE CROSSING vertically above the top of the rail, then without the use of a contractor the States self insurance shall be accepted and evidenced on a certificate of insurance with the following limits:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Business Automobile Coverage. This Coverage shall 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
- The coverage shall be primary under the limitations of ARS 41-621 and non-contributing with respect to any insurance

Workers Compensation and Employers Liability Coverage including coverage for, but not limited to:

- State'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.

The State is allowed to self-insure part or all of the insurance requirements without the prior written consent of Railroad. Any deductible, self-insured retention or other financial responsible for claims shall be covered directly by the state in lieu of insurance.

10. STATE hereby grants to BNSF, at no cost or expense to BNSF, the right to retain an existing dedicated right of access from STATE's property to BNSF tracks for maintenance purposes.
11. BNSF may, at its expense, make future changes or additions to the railroad components of the at-grade crossing if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the at-grade crossing. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the at-grade crossing to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the at-grade crossing, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto, subject to Arizona State Transportation Board approval. Before making any such changes, alterations or reconstruction of the highway facilities that will effect the STATE, BNSF shall provide to the STATE copies of the plans and specifications and receive the STATE's written approval prior to commencing work. BNSF is not required to receive written approval from the STATE prior to performing routine maintenance on non-STATE components.
12. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the at-grade crossing if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction will not encroach further upon the easement limits previously granted to State by BNSF, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.
13. The covenants and provisions of this AGREEMENT are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
14. In the event construction of the PROJECT does not commence within two (2) years of the Effective Date, this AGREEMENT will become null and void. All monies paid to BNSF by STATE for easements/licenses or other fees shall be returned to STATE.

15. BNSF's Manager, Public Projects will be given a notice to proceed when the Opinion and Order has returned from the Arizona Corporation Commission to the STATE. Construction of the PROJECT, on BNSF right-of-way, shall not be commenced until STATE'S contractor shall have given not less than thirty (30) working days prior written notice to BNSF's Manager Public Projects, making reference to BNSF's File Number 025700D which notice shall state the time that operations for construction of the Project, on BNSF right-of-way, shall commence.
16. STATE approval is required for any invoice total which exceeds the cost estimate set forth in Exhibit D plus any approved changes by more than ten percent (10%). Invoices which exceed the original or revised estimated cost by more than ten percent (10%) without prior written approval shall be returned to BNSF pending resolution.
17. If STATE, due to an audit of BNSF's billing sent to STATE has any audit exceptions, STATE and BNSF shall discuss the audit exceptions and agree upon the amount of billing to STATE that is the subject matter of the audit exceptions. If, when doing such review, it is determined by STATE and BNSF that BNSF is to reimburse STATE for any payment already made by STATE to BNSF, BNSF shall make such reimbursement within ninety (90) days after STATE and BNSF have made such determination. Likewise, if it is determined by STATE and BNSF that STATE needs to make any additional payment to BNSF, STATE shall make such additional payment within ninety (90) days after STATE and BNSF have made such determination. If any audit exception(s) cannot be settled by STATE and BNSF through their discussions, the audit exception(s) shall be settled through compromise, arbitration or adjudication as provided in this AGREEMENT
18. This AGREEMENT is subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.
19. BNSF shall comply with all applicable provisions of Executive Order 75-5 and 99-4, "Non-Discrimination in Employment by Government Contractors and Subcontractors".
20. All parties hereby are put on notice that this AGREEMENT is subject to cancellation by the Governor pursuant to A.R.S. § 38-511.
21. In accordance with A.R.S. § 35-214, all books, accounts, reports, files and other records relating to this AGREEMENT shall be subject at reasonable times to inspection and audit by STATE for five (5) years after the receipt of final payment. At STATE's discretion said inspection and audit may be held at BNSF's office during normal business hours. STATE shall conduct its inspection and audit at its expense.
22. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire AGREEMENT between the parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.

23. This AGREEMENT shall be governed by the laws of the State of Arizona.
24. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
25. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:  
BNSF's Manager Public Projects  
740 East Carnegie Drive  
San Bernardino, CA 92408

State of Arizona  
Arizona Department of Transportation  
Utility & Railroad Section  
Attn: Engineer-Manager  
205 South 17<sup>th</sup> Avenue – Mail Drop 618E  
Phoenix, Arizona 85007

26. STATE'S PROJECT plans and specifications for TRACS No. 060 MA 139 H6866 01C are incorporated by reference only.
27. Neither termination nor expiration of this AGREEMENT will release either party from any liability or obligation under this AGREEMENT, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
28. To the maximum extent possible, each provision of this AGREEMENT will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this AGREEMENT is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.
29. This AGREEMENT (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete AGREEMENT between BNSF and STATE with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

IN WITNESS WHEREOF, STATE has caused this AGREEMENT to be executed and attested by its duly qualified and authorized officials, and BNSF has executed this AGREEMENT, both as of the day and year first above written.

**STATE OF ARIZONA**

JOHN HALIKOWSKI, DIRECTOR

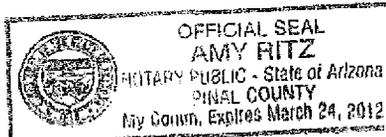
By: [Signature] Date: 1-6-2010

Printed Name: ROBERT H. TRAVIS

Utility and Railroad Engineering Section

**ACKNOWLEDGMENT BY STATE**

STATE OF ARIZONA )  
 ) ss  
COUNTY OF MARICOPA )



The foregoing instrument was acknowledged before me this 6th day of January, 2010, by Robert Travis of the Utility & Railroad Engineering Section, Arizona Department of Transportation.

My Commission Expires: March 24, 2012  
[Signature] Notary Public

\*\*\*\*\*  
**BNSF RAILWAY COMPANY**

By: [Signature] Date: 12/1/2009

Printed Name: Melvin Thomas

Title: Manager Public Projects

**ACKNOWLEDGMENT BY BNSF**

STATE OF Texas )  
 ) ss  
COUNTY OF Tarrant )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ on behalf of Burlington Northern Santa Fe, a Delaware corporation.

My Commission Expires: \_\_\_\_\_  
Notary Public

APPROVED  
*James R. Reynolds*  
Assistant Attorney General  
Attorney for Department  
of Transportation  
Date 10/5/09

State of California )  
County of SAN BERNARDINO )

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

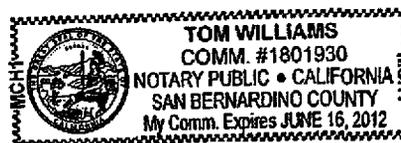
On December 1, 2009 before me, Tom Williams  
(here insert name and title of the officer)

personally appeared MELVIN THOMAS

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tom Williams

(Seal)

com 5/P June 16, 2012

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_

containing \_\_\_\_\_ pages, and dated \_\_\_\_\_

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) \_\_\_\_\_  
Title(s) \_\_\_\_\_

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: \_\_\_\_\_

representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information	
<b>Method of Signer Identification</b>	
Proved to me on the basis of satisfactory evidence: <input type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # _____ Entry # _____	
Notary contact: _____	
<b>Other</b>	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	



**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 US 60/ Grand Avenue at the Ennis Spur.
- **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". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **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. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:  
  

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- **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 Arizona DOT 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 **025700D**

- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 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. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. 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.

## **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 Superintendent at (602) 382-5828 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: [Note to Drafter: The vertical clearance should mirror the final negotiated design clearance]
  - 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 Arizona DOT and must not be undertaken until approved in writing by the Railway, and until the Arizona DOT 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 the Arizona DOT 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 Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways 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 constructed and, at the completion of the project, removed 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.

Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services on railroad property under this Agreement.

The background screening shall at a minimum meet the criteria defined by the e-RAILSAFE program outlined at <http://www.e-railsafe.com> in addition to any other applicable regulatory requirements. The e-RAILSAFE program uses rail industry background screening standards.

Contractor shall obtain consent from all employees screened in compliance with the e-RAILSAFE program criteria to release completed background information to BNSF. Contractor shall be subject to periodic audit to ensure compliance.

Contractor shall not permit any of its employees, subcontractors or agents to perform services on property hereunder who are not approved under e-RAILSAFE program standards. Railroad shall have the right to deny entry onto its premises to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth for the e-RAILSAFE program or who pose a threat, in Railroad's reasonable opinion, to the safety or security of Railroad's operations.

Contractors shall ensure its employees, subcontractors and agents are United States citizens or legally working in this country under a work VISA.

### 1.05 Railway Flagger Services:

- 1.05.01 The Contractor must give Railway's Roadmaster (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 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, upon inspection by Railway's Representative, other conditions warrant.
  - 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.
  - 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 will be borne by the Arizona DOT. The

estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 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, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. 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 \_\_\_\_\_ freight trains per 24-hour period at a timetable speed \_\_\_\_\_ MPH and \_\_\_\_\_ passenger trains at a timetable speed of \_\_\_\_\_ 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 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 OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN 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 (505-767-6826). 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.

**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**

**EXHIBIT "C-1"**

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

**BNSF RAILWAY COMPANY**  
**Attention: Manager Public Projects**

**Railway File: 025700D**  
**Agency Project: Tracs 060 MA 139 H6866 01C/ US 60 Widening at Ennis Spur.**

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated \_\_\_\_\_, 200\_, [\*\*\*Drafter's Note: insert the date of the contract between the Agency and the Contractor here] with the Arizona Department of Transportation (ADOT) for the performance of certain work in connection with the following project

\_\_\_\_\_. 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 ADOT (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 LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

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.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railroad to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILROAD FOR RAILROAD'S ACTS OF NEGLIGENCE.**

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

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:

Ebix BPO  
PO Box 12010-BN  
Hemet, CA 92546-8010  
Fax number: 951-766-2299

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 \$382.20 per hour per incident. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

**Contractor and its subcontractors must give Railway's Engineering 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: \_\_\_\_\_

**EXHIBIT D**

TRACS 060 MA 139 H6866 01C  
Project ARRA-060-B(201)A  
Agreement 3012-08-BNSF  
BNSF LS 7208, Rail Mile 167.50 to 178.45, Phoenix Subdivision  
*Surface and Signal work at US 60/Ennis Spur*  
DOT # 025 700 D

Summary of Costs to be paid by STATE thru this agreement

Railroad Crossing Work

Labor	\$ 15,621.00
Materials	\$ 15,090.00
Administration	\$ 6,184.00
Other	\$ 25,000.00
Surface Subtotal	<u>\$ 61,895.00</u>

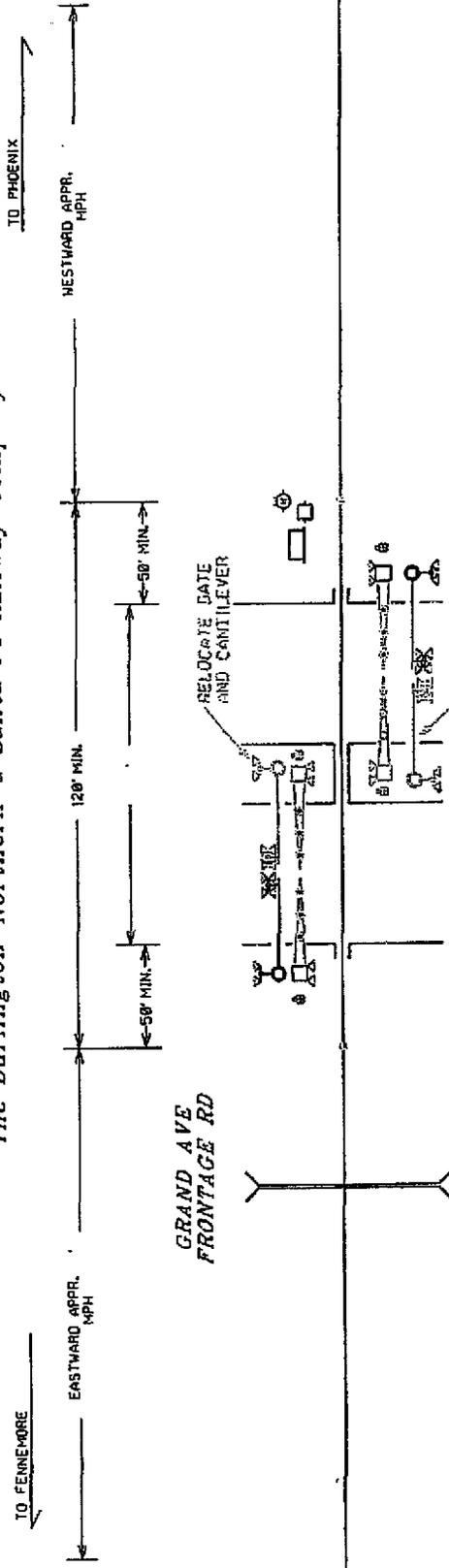
Railroad Signal Work

Labor	\$ 87,486.00
Material	\$ 15,361.00
Administration	\$ 6,815.00
Other	\$ 9,800.00
Signal Subtotal	<u>\$119,462.00</u>

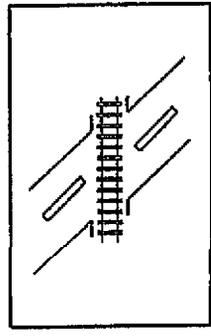
**Total Cost for Agreement 3012-08-BNSF    \$181,357.00**



The Burlington Northern & Santa Fe Railway Company



GRAND AVE.  
DOT # 025 700 D



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

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

**Warning device placement:**  
 Clearance to C.L. Track = Min. 12'  
 Edge of Road to C.L. Foundation:  
 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

**BNSF RAILWAY CO.**  
 LOCATION: EL MIRAGE, AZ  
 STREET: GRAND AVE.  
 LS: 7209  
 M.P. 000.20  
 DOT # 025-700-D  
 DIVISION: SOUTHWEST  
 SUBDIVISION: ENNIS  
 KANSAS CITY  
 NO SCALE  
 DATE: 07/14/2009  
 FILE: 7209000.20.dgn  
 DDF/DDF

Exhibit D-2  
 Signal Plan  
 Agreement 3112-08-BNSF  
 Project ARRA 060-B(201)A  
 DOT # 025 700 D

