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Transcript Exhibit(s)

Docket #(s): RR-03639A-10-0208

Exhibit #: A1-A5, S1

AZ CORP COMMISSION
DOCKET CONTROL

2010 AUG 20 A 11:38

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Arizona Corporation Commission
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AUG 20 2010

DOCKETED BY 



4561 E. McDowell Road
 Phoenix, AZ 85008
 602.454.0402
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Memo

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

Date: May 19, 2010

Subject: Arizona Corporation Commission
 Application for UPRR Roadway Crossing
 at Higley Road (UPRR Folder No. 2599-
 31)

Attachments: 1) Supporting Calculations
 2) 8 1/2"x11" conceptual drawing
 3) Construction cost estimate of grade
 separated crossing
 4) Draft agreement between Town of Gilbert
 and UPRR sent to Town in May 2010

Project: Higley and Williams Field Road Improvements

Project: Town of Gilbert CIP ST062
 Number: AZTEC Project No. AZE0703
 UPRR Folder No. 2599-31

From: Robert Lyons, P.E.

A Union Pacific Railroad (UPRR) secondary railroad line runs diagonally (from northwest to southeast) across the jurisdictional limits of the Town of Gilbert (Town). The UPRR line, therefore, crosses roadways that run in both the east-west direction and the north-south direction as it crosses the Town. As one of the fastest growing municipalities in Arizona and the United States over the past 15 years, the Town must constantly improve and expand its roadway system to accommodate its residents and the non-residents traveling to and through the community. When the number of lanes of a roadway are planned for expansion, the impacted railroad crossings must also be expanded to accommodate the wider roadway. As part of its roadway improvement plans, the Town works closely with UPRR to improve and update railroad crossings within the Town when these expansions occur. In most instances, the Town incurs the costs associated with improving and updating the UPRR crossings in addition to incurring the costs of the roadway improvements. The most recent crossing upgrades requested by the Town were approved by Decision Nos. 71487 and 71489, dated February 23, 2010.

This memo is submitted to the Arizona Corporation Commission (ACC) as an application to request an upgrade to an existing Union Pacific Railroad (UPRR) crossing, on behalf of the Town of Gilbert. Below is information based on the most current ACC application instructions.

1. Location of Crossing

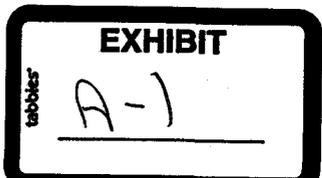
The Higley and Williams Field Road project improvements include widening Higley Road to a six lane roadway with a 16-foot wide raised median across the UPRR right-of-way. The UPRR and Higley Road crossing is approximately 1,200 feet north of Williams Field Road. Representatives from the ACC, UPRR, Town of Gilbert, and consultants attended a field meeting on August 27, 2007.

2. Why the Crossing is Needed

The railroad crossing at Higley Road is an existing two lane crossing. Current and projected traffic volumes on Higley Road require addition of more lanes on Higley Road. This project includes widening of the existing crossing.

3. Why the Existing Crossing Cannot be Grade Separated

With the proposed improvements to Higley Road, the location of the at-grade crossing remains unchanged. A grade separation would have the following undesired consequences: 1) Impact to high voltage overhead power lines currently running parallel to the railroad; 2) There are several underground utilities in Higley Road that cannot support 30 feet of additional embankment needed for a grade-separated crossing. Among these utilities is a critical 30-inch waterline which would be extremely difficult to shut down for a relocation; 3) There is insufficient right-of-way to accommodate the



30-foot high embankment slopes along Higley Road; and 4) There is inadequate distance between the railroad and the existing Higley Road/Williams Field Road intersection to raise the roadway grade over the railroad without violating sight-distance requirements; 5) The existing Higley Road/Vest Avenue intersection is 300 feet north of the railroad that would be removed entirely in order to accommodate a grade separated crossing; and 6) Local access would be severed at Fence Co, Roosevelt Water Conservation District headquarters, and Circle K.

None of the FHWA Grade Separation Guidelines indicate grade separation is needed currently or through 2030 as indicated in the data provided in response to Item 24.

4. Type of Warning Devices to be Installed

The warning devices for north bound and south bound traffic included in the design are as follows: gates with flashing lights will be installed in the median and outside the roadway near the sidewalk; cantilever flashing railroad signals will be installed outside the roadway near the sidewalk; and railroad crossing warning signs will be placed per MUTCD, Part 8 standards.

5. Type of Warning Devices currently installed at crossing

The warning devices currently installed at the crossing include gates with flashing lights located outside the existing roadway. These will be removed by UPRR when they install the new warning devices described in question 4 above.

6. Who will Maintain the Crossing Warning Devices

UPRR will own and maintain the physical elements of the crossing (crossing surface, gates, flashing lights). The Town of Gilbert will own and maintain the approaching surface, signing and movement markings on Higley Road.

7. Who is Funding the Project

The Town of Gilbert is funding this project.

Below are responses to additional anticipated questions:

8. Provide Average Daily Traffic Counts for this location.

Existing (2009): 17,823 vpd (Town of Gilbert traffic count web page, <http://www.ci.gilbert.az.us/traffic/counts06.cfm>)

2020: 32,000 vpd, (Information provided to AZTEC from Task Engineering on 6/28/2007 via email correspondence from Melissa Manes of Task Engineering. Traffic projections on Higley Road were not included in the report but was made available through the traffic modeling that was done by Task Engineering as part of the *November 16, 2006, Cooley Station Traffic Impact Study*.)

2030: 52,000 vpd (using a 5% growth rate projected from 2020 to 2030)

9. Please describe the current Level of Service (LOS) at this intersection, and what the LOS will be with the proposed alterations to the intersection.

Level of service (LOS) is a rating to qualitatively measure the operating characteristics in terms of speed, travel time, traffic interruption, freedom to maneuver, comfort, and convenience. There are six levels of service, designated with letters from A to F. LOS A represents the best operating conditions and LOS F the worst. LOS is primarily a function of traffic counts and the number of travel lanes. For

a two lane roadway, as we currently exist on Higley Road as it crosses the railroad tracks, average daily traffic volumes above approximately 13,000 vehicles per day is rated LOS F. Current traffic volumes average 17,823 vehicles per day, well over this amount. This is an indication that the improvements proposed by the application (which will expand the crossing to a six lane roadway with median, bike lane and a sidewalk on both sides of Higley Road from the current two lane roadway) are necessary to accommodate current traffic volumes. Current and Proposed LOS are as follows:

Current LOS: F
Proposed LOS: A

10. Provide any traffic studies done by the road authorities for each area.

No traffic studies have been identified in this area.

11. Provide distances in miles to the next public crossing on either side of the proposed project location. Are any of these grade separations?

The next roadway crossing to the northwest is at Ray Road, which is an at-grade crossing, located approximately 1.5 miles from the Higley/UPRR crossing.

The next roadway crossing to the southeast is at Williams Field Road, which is an at-grade crossing, located approximately a third mile from the Higley/UPRR crossing.

12. How and why was grade separation not decided on at this time? Please provide any studies that were done to support these answers.

The Town's design consultant reviewed the impacts and costs associated with a grade-separation. A formal study was not prepared, but the FHWA Grade Separation Guidelines were reviewed and, as indicated in the data provided in response to Item 24, none of the guidelines indicate grade separation is needed currently or through 2030. The items listed in response to Question No. 3 above provide substantial justification adequate to retain an at-grade crossing at this location. In addition, UPRR only has one accident reported at this crossing.

13. If this crossing was grade separated, provide a cost estimate of the project.

The total estimated construction, design, construction administration, and right-of-way cost is estimated to be \$26,777,716. The details of this estimate are attached to this memo.

14. 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.

The area around the crossing is completely developed. The Town of Gilbert's Zoning Map shows the following: Single family residential to the north; public facility/institutional to the northeast; light industrial to the southwest; and shopping center to the southeast.

15. 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?

From a 3/321/2008 email from Jim Smith/UPRR: The track is used for through freight service and there are an average of 6 trains per day. Maximum train speeds are 60 mph. The Union Pacific does not have any plans to construct a second track at this crossing at this time but will need to maintain the ability to add a second track if future expansion is needed. This is not a passenger train route. This information was also confirmed by Aziz Aman/UPRR on 5/28/2009.

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

The crossing is within two school districts, Higley Unified School District No. 60 and Gilbert Unified School District No. 41. Schools located within these districts and a three mile radius of the crossing is listed as follows:

Elementary: Ashland Ranch Elementary – 1918 S. Ashland Ranch Road
Higley Elementary – 3391 E. Vest Avenue
Coronado Elementary – 4333 S. Deanza Blvd
Neely Academy – 321 W. Juniper Avenue
Gateway Pointe Elementary – 2069 S. De La Torre Drive
Eagle Aerie School – 17019 S. Greenfield Road
Chaparral Elementary – 3380 E. Frye Road
Finley Farms Elementary – 375 S. Columbus Drive
Spectrum Elementary – 2846 S. Spectrum Way
Highland Park Elementary – 230 N. Cole Drive
Power Ranch Elementary – 4351 S. Ranch House Parkway
SanTan Elementary – 3443 E. Calistoga Drive

High School: Gilbert High School - 1101 E. Elliot Road
Mesquite Senior High School - 500 S. McQueen Road
Highland High School - 4301 E. Guadalupe Road
Williams Field High School - 2076 South Higley Road
Gilbert Christian - 1424 South Promenade Lane
Higley High School – 4068 E. Pecos Road
Desert Hills High School – 1515 S. Val Vista Drive

Also, the Higley Unified School District will be installing a bus maintenance depot approximately 300 feet north of the tracks in 2009.

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

Per a phone conversation with Mike McGuire, the Transportation Routing Coordinator for the Higley School District, there are 136 daily trips through this crossing.

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

The main Hospitals and health facilities are as follows:

Hospitals: Gilbert Hospital - 5656 S Power Road
Mercy Gilbert Medical Center - 3555 S. Val Vista Dr.

Health Facilities: Urgent Care Express - 920 E. Williams Field
East Valley Urgent Care - 641 W. Warner Road

No data is available for the number of emergency vehicle crossing at this location.

19. Please provide total cost of improvements to each crossing.

| | |
|-----------------------------|-------------|
| • Railroad track & surface: | \$326,272 |
| • Railroad signal: | \$780,201 |
| <hr/> | |
| • UPRR Sub-Total: | \$1,106,473 |
| • Roadway Improvements: | \$139,000 |
| <hr/> | |
| • Total: | \$1,245,473 |

These costs are based on the draft agreement sent by UPRR to the Town of Gilbert in May 2010.

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

We are unable to provide this information. The Town does not require a permit for hazardous material.

21. Please provide the posted vehicular speed limit for the roadway.

45 mph

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

There are no public bus routes through this crossing at this time.

23. 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.

Based upon a search of the UPRR website (www.uprr.com), no spur lines have been removed within the last three years inside a 10-mile radius of the crossings covered by this application.

24. 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).

Please refer to attached FHWA – Grade Separation Guidelines Table. All items are answered No.

25. 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.

(1) Based on 1 mile of train at 45 mph (45 mph is used in lieu of 60 mph to be conservative and more in line with an average train speed), 25 seconds of preemption time, and 15 seconds for the warning devices to reset, the average delay time per train is 1.9 minutes. At six trains per day, the average delay time is 11.9 minutes per day.

(2) Based on a stopping time of 28 seconds and a time of 125 seconds to accelerate and to clear the track and 25 seconds of preemption time and 15 seconds for the warning devices to reset, the average delay time per train if a train stops on the track is 3.2 minutes. These times are based on one mile of

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:**

| Criteria | Current/2030 | Higley Road Crossing |
|---|---------------------------------------|--|
| The highway is a part of the designated interstate Highway System. | Crossing Currently meets the criteria | No – based on the following link depicting a map of the National Highway System within the Phoenix-Mesa AZ area: http://www.fhwa.dot.gov/planning/nhs/maps/az/phoenix_az.pdf |
| | Crossing meets the criteria by 2030 | No – based on the following link depicting a map of Congressional High Priority Corridors on the National Highway System: http://www.fhwa.dot.gov/planning/nhs/hipricorridors/hipri-big.pdf |
| The highway is otherwise designed to have full controlled access | Crossing Currently meets the criteria | No – Higley Road is currently a rural two lane road. There is currently access to local streets, schools, and residences along Higley Road in this vicinity. |
| | Crossing meets the criteria by 2030 | No – Higley Road will be improved to a six lane major arterial roadway with a median. The area around the crossing is completely developed. |
| The posted highway speed equals or exceeds 70 mph | Crossing Currently meets the criteria | No – Please refer to Item No. 21 above. |
| | Crossing meets the criteria by 2030 | No – The posted speed limit will remain 45 mph with the proposed improvements. |
| AADT exceeds 100,000 in urban areas or 50,000 in rural areas. | Crossing Currently meets the criteria | No – Please refer to Item No. 8 above. |
| | Crossing meets the criteria by 2030 | No – Please refer to Item No. 8 above. |
| Maximum authorized train speed exceeds 110 mph | Crossing Currently meets the criteria | No – Please refer to Item No. 15 above. |
| | Crossing meets the criteria by 2030 | No – Please refer to Item No. 15 above. |
| An average of 150 or more trains per day or 300 million gross tons/year. | Crossing Currently meets the criteria | No – Please refer to Item No. 15 above. |
| | Crossing meets the criteria by 2030 | No – Please refer to Item No. 15 above. |
| Crossing exposure (trains/day x AADT) exceeds 1 M 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 - Please refer to Item Nos. 8 and 15 above. Based on this data, crossing exposure using 2009 volumes is 107k. |
| | Crossing meets the criteria by 2030 | No - Please refer to Item Nos. 8 and 15 above. Based on this data, crossing exposure using 2030 volume is 312k. |
| Expected accident frequency for active devices with dates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5. | Crossing Currently meets the criteria | No – See attached Accident Prediction Calculations |
| | Crossing meets the criteria by 2030 | No – See attached Accident Prediction Calculations |

| Criteria | Current/2030 | Higley Road Crossing |
|--|---------------------------------------|--------------------------------------|
| Vehicle delay exceeds 40 vehicle hours per day | Crossing Currently meets the criteria | No – See attached Delay Calculations |
| | Crossing meets the criteria by 2030 | No – See attached Delay Calculations |

ATTACHMENT I
SUPPORTING CALCULATIONS

Accident Prediction Calculations

Crossing: UPRR/Higley Road
 Date of Calculation: May 7, 2010
 Calculation by: Robert Lyons

| With Gate Device | Meet Criteria ? | Final Accident Prediction | Historical Number of Accident in 5 Years (N/T) | Initial Collision Prediction (a) |
|------------------|-----------------|--|--|--|
| Formula | Criteria >0.5? | From Lookup Table 24 (Determined by a and N/T) | | $a = K * EI * MT * DT * HP * MS * HT * HL$ |
| Year 2009 | Not Met | 0.057 | 0 | 0.10 |
| Year 2020 | | | | |
| Year 2030 | Not Met | 0.089 | 0 | 0.21 |



Table 19 US DOT Accident Prediction Facotre Values for Crossings with Gate Warning Devices

| Parameters | Formula Constant (K) | Exposure Index Factor (EI) | Main Tracks Factor (MT) | Day Thru Trains Factor (DT) | Highway Paved Factor (HP) | Maximum Speed Factor (MS) | Highway Type Factor (HT) | Highway Lanes Factor (HL) |
|------------|----------------------|---|-------------------------|-----------------------------|---------------------------|---------------------------|--------------------------|---------------------------|
| Formula | 0.001088 | From Lookup Table 19, Determined by c*t | $e^{(0.2912mt)}$ | 1.00 | 1.00 | 1.00 | 1.00 | $e^{0.1036(hl-1)}$ |
| Year 2009 | 0.001088 | 63.13 | 1.34 | 1.00 | 1.00 | 1.00 | 1.00 | 1.11 |
| Year 2020 | 0.001088 | | | | | | | |
| Year 2030 | 0.001088 | 86.98 | 1.34 | 1.00 | 1.00 | 1.00 | 1.00 | 1.68 |



| Data | AADT (c) | Total Train Movements Per Day (t) | Number of Main Track (mt) | Number of Highway Lanes (hl) |
|-----------|----------|-----------------------------------|---------------------------|------------------------------|
| Year 2009 | 17823 | 6 | 1 | 2 |
| Year 2020 | 32000 | 6 | 1 | 6 |
| Year 2030 | 52000 | 6 | 1 | 6 |

Sources: <http://safety.fhwa.dot.gov/xings/07010/sec03.htm>

Delay Calculations

Crossing: UPRR/Higley Road
 Date of Calculation: May 7, 2010
 Calculation by: Robert Lyons

| Year | Meet Criteria (>40)? | Total Delay (veh*hours) per day | Train Passage Time (sec) | Gate Movement Time (sec) | Traffic Rate (veh/sec) | AADT | Train Length (ft) | Road Width (ft) | Train Speed (MPH) | No. of Daily Thru Train |
|------|----------------------|---------------------------------|--------------------------|--------------------------|------------------------|-------|-------------------|-----------------|-------------------|-------------------------|
| 2008 | Not Met | 1.57 | 80.42 | 15 | 0.21 | 17823 | 5280 | 28 | 45 | 6 |
| 2030 | Not Met | 4.66 | 81.42 | 15 | 0.60 | 52000 | 5280 | 94 | 45 | 6 |

Note: Total Delay is the area of triangle queuing diagram

ATTACHMENT 2

8 1/2"X11" CONCEPTUAL DRAWING

| | | | |
|---------------------|-----------|-------|----------|
| PLAN NO. | PROJ. NO. | TOTAL | AS BUILT |
| 9 | 9 | 14 | |
| PAGE, SHEET & STOPS | | | |
| RZTEC | | | |

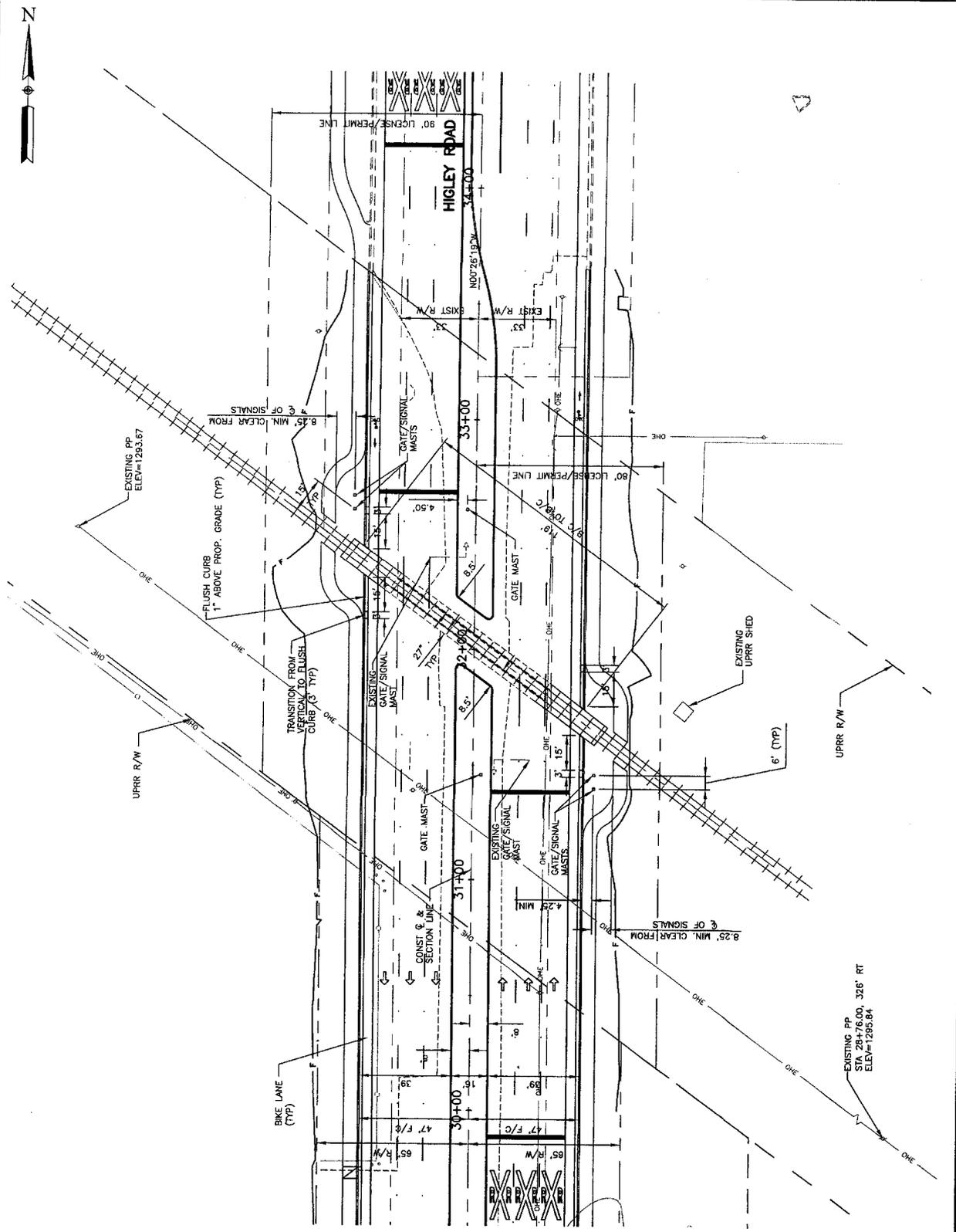
602-283-1100
7400-STAKE-IT

PRELIMINARY
NOT FOR
CONSTRUCTION
OR RECORDING

ROADWAY PLAN SHEET
GILBERT
ARIZONA

HIGLEY, RECKER & WILDING FIELD ROAD IMPROVEMENTS
HIGLEY ROAD TO POWER ROAD
STA 29+50 TO STA 34+50

DATE: 10/27/07
DRAWN BY: JLD
CHECKED BY: JLD
SCALE: 1"=30'



| | | | | |
|-----|-----------------------------|--------|---------|------|
| NO. | DESCRIPTION | REV BY | CHKD BY | DATE |
| | REVISION BY TOWN OF GILBERT | | | |
| NO. | DESCRIPTION | REV BY | CHKD BY | DATE |
| | REVISION BY TOWN OF GILBERT | | | |
| NO. | DESCRIPTION | REV BY | CHKD BY | DATE |
| | REVISION BY TOWN OF GILBERT | | | |

ATTACHMENT 3

**CONSTRUCTION COST ESTIMATE OF
GRADE SEPARATED CROSSING**

**Construction Cost Estimate of Grade Separated Crossing
Higley Road/UPRR Crossing**

Higley Rd-Over-pass @ UPRR crossing

| Item | Quantity | Unit | Unit Cost | Cost |
|---------------------------------|------------|------|----------------|------------------------|
| Excavation | 4,500.00 | CY | \$5.00 | \$22,500.00 |
| Fill | 170,000.00 | CY | \$5.00 | \$850,000.00 |
| Bridge | 13,320.00 | SF | \$200.00 | \$2,664,000.00 |
| Retaining Walls | 86,403.00 | SF | \$60.00 | \$5,184,180.00 |
| Subgrade Preparation | 22,000.00 | SY | \$3.00 | \$66,000.00 |
| Temporary Construction Easement | 181,000.00 | SF | \$5.00 | \$905,000.00 |
| ABC 18" | 14,000.00 | SY | \$20.00 | \$280,000.00 |
| AC 1-1/2" | 14,000.00 | SY | \$9.00 | \$126,000.00 |
| AC 2-1/2" | 14,000.00 | SY | \$11.00 | \$154,000.00 |
| Tack Coat | 22.00 | TON | \$800.00 | \$17,600.00 |
| Vertical Curb & Gutter | 3,510.00 | LF | \$18.00 | \$63,180.00 |
| Vertical Curb | 3,510.00 | LF | \$15.00 | \$52,650.00 |
| Concrete Sidewalk | 23,000.00 | SF | \$5.00 | \$115,000.00 |
| Driveway Entrance | 4.00 | EA | \$10,000.00 | \$40,000.00 |
| Median Nose | 4.00 | EA | \$1,000.00 | \$4,000.00 |
| Median Brick Pavers | 2,320.00 | SF | \$20.00 | \$46,400.00 |
| Landscaping | 1.00 | LS | \$500,000.00 | \$500,000.00 |
| Relocate Sewer Mains | 1,000.00 | LF | \$120.00 | \$120,000.00 |
| Relocate Water Mains | 4,000.00 | LF | \$100.00 | \$400,000.00 |
| Other Utility Relocations | 1.00 | LS | \$2,000,000.00 | \$2,000,000.00 |
| Drainage | 1.00 | LS | \$200,000.00 | \$200,000.00 |
| Signing | 1.00 | LS | \$20,000.00 | \$20,000.00 |
| Striping | 1.00 | LS | \$15,000.00 | \$15,000.00 |
| Traffic Control | 1.00 | LS | \$300,000.00 | \$300,000.00 |
| Impact to Lock Tight | 1.00 | LS | \$250,000.00 | \$250,000.00 |
| Impact to Rock Source | 1.00 | LS | \$250,000.00 | \$250,000.00 |
| Impact to R.W.C.D. | 1.00 | LS | \$500,000.00 | \$500,000.00 |
| Electrical/Lighting | 1.00 | LS | \$500,000.00 | \$500,000.00 |
| 230 KV Relocation | 1.00 | LS | \$5,000,000.00 | \$5,000,000.00 |
| 12 KV & 64 KV Relocation | 1.00 | LS | \$3,000,000.00 | \$3,000,000.00 |
| TOTAL | | | | \$23,645,510.00 |

Vest Avenue

| Item | Quantity | Unit | Unit Cost | Cost |
|---------------------------------|-----------|------|-------------|-----------------------|
| Excavation | 1,000.00 | CY | \$5.00 | \$5,000.00 |
| Fill | 26,289.00 | CY | \$5.00 | \$131,445.00 |
| Retaining Walls | 20,280.00 | SF | \$60.00 | \$1,216,800.00 |
| Temporary Construction Easement | 78,000.00 | SF | \$5.00 | \$390,000.00 |
| Vertical Curb & Gutter | 1,560.00 | LF | \$18.00 | \$28,080.00 |
| Vertical Curb | 1,560.00 | LF | \$15.00 | \$23,400.00 |
| Median Brick Pavers | 5,460.00 | SF | \$20.00 | \$109,200.00 |
| 5' Concrete Sidewalk | 7,800.00 | SF | \$5.00 | \$39,000.00 |
| Subgrade Preparation | 6,067.00 | SY | \$3.00 | \$18,201.00 |
| ABC 18" | 4,160.00 | SY | \$20.00 | \$83,200.00 |
| AC 1-1/2" | 4,160.00 | SY | \$9.00 | \$37,440.00 |
| AC 2-1/2" | 4,160.00 | SY | \$11.00 | \$45,760.00 |
| Tack Coat | 7.00 | TON | \$800.00 | \$5,600.00 |
| Driveway Entrance | 1.00 | EA | \$10,000.00 | \$10,000.00 |
| TOTAL | | | | \$2,143,126.00 |

Business Access Road

| Item | Quantity | Unit | Unit Cost | Cost |
|------------------------|-----------------|-------------|--------------------|------------------------|
| Excavation | 1,000.00 | CY | \$5.00 | \$5,000.00 |
| Fill | 2,606.00 | CY | \$5.00 | \$13,030.00 |
| Permanent Right of Way | 53,047.00 | SF | \$15.00 | \$795,705.00 |
| Vertical Curb | 2,099.00 | LF | \$15.00 | \$31,485.00 |
| Subgrade Preparation | 3,020.00 | SY | \$3.00 | \$9,060.00 |
| ABC 18" | 3,020.00 | SY | \$20.00 | \$60,400.00 |
| AC 1-1/2" | 3,020.00 | SY | \$9.00 | \$27,180.00 |
| AC 2-1/2" | 3,020.00 | SY | \$11.00 | \$33,220.00 |
| Tack Coat | 5.00 | TON | \$800.00 | \$4,000.00 |
| Driveway Entrance | 1.00 | EA | \$10,000.00 | \$10,000.00 |
| | | | TOTAL | \$989,080.00 |
| | | | GRAND TOTAL | \$26,777,716.00 |

ATTACHMENT 4

**DRAFT AGREEMENT BETWEEN TOWN OF GILBERT
AND UPRR SENT TO TOWN IN MAY 2010**

PUBLIC HIGHWAY AT-GRADE
CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF GILBERT

COVERING THE

RECONSTRUCTION AND WIDENING OF THE EXISTING
HIGLEY ROAD AT-GRADE PUBLIC ROAD CROSSING

AT

RAILROAD MILE POST 931.90 – PHOENIX SUBDIVISION
DOT NO.: 741-830Y

IN OR NEAR

HIGLEY (GILBERT),
MARICOPA COUNTY,
ARIZONA



UPRR Folder No.: 2599-31

UPRR Audit No.: _____

PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

Higley Road – DOT No.: 741-830Y
UPRR Mile Post 931.90 – Phoenix Subdivision
Higley (Gilbert), Maricopa County, Arizona

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 200__ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at the Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF GILBERT**, a municipal corporation or political subdivision of the State of Arizona to be addressed at 90 East Civic Center Drive, Gilbert, Arizona 85296 ("City").

RECITALS:

The City desires to undertake as its project (the "Project") the reconstruction and widening of the existing at-grade public road crossing over Higley Road, DOT No. 741-830Y, at Railroad's Mile Post 931.90 on the Railroad's Phoenix Subdivision in Higley (Gilbert), Maricopa County, Arizona (the "Crossing Area") in the vicinity of the area shown on the Railroad Location Print marked **Exhibit A** and as specified on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof. The road crossing, as reconstructed and widened is hereinafter the "Roadway" and the portion of the Railroad's property where the Roadway crosses the Railroad's property is the "Crossing Area."

The right of way presently utilized by the City is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting additional rights to the City to facilitate the reconstruction and widening of the Roadway. The portion of Railroad's property that City needs to use in connection with the Roadway (including the right of way area covered under the Original Agreement or in a separate document) is shown on the Illustrative Print of the Legal Description marked **Exhibit A-3** and also described in the Legal Description marked **Exhibit A-2**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.



Section 2. RAILROAD GRANTS RIGHT

For and in consideration of **ONE HUNDRED TWENTY-EIGHT THOUSAND FOUR HUNDRED TEN DOLLARS (\$128,410.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the City the right to construct, maintain and repair the Roadway over and across the Crossing Area.

Section 3. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- execute the Railroad's then current Contractor's Right of Entry Agreement
 - obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
- Senior Manager - Contracts
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690
UPRR Folder No. 2599-31*
- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

**Section 5. FEDERAL AID POLICY GUIDE**

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The City agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimate(s):
- Railroad's Track & Surface Material Estimate dated November 18, 2009, in the amount of \$326,272.00, marked **Exhibit C**, and
 - Railroad's Signal Material Estimate dated November 12, 2009, in the amount of \$780,201.00, marked **Exhibit C-1**,

each attached hereto and hereby made a part hereof (collectively the "Estimate"). As set forth in the Estimate, the Railroad's combined estimated cost for the Railroad's work associated with the Project is (\$1,106,473.00).

- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The City agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

Section 8. PLANS

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized



- representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
 - C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
 - D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

Section 9. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

Section 10. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in



- full force and effect for as long as the Roadway remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
 - C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

Section 11. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and City have executed this Agreement.
- (ii) The Railroad has provided to the City the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

Section 12. SIGNAL & SURFACE MAINTENANCE.

- A. The City agrees to reimburse the Railroad the cost of future maintenance of the automatic grade-crossing protection within thirty (30) days of the City's receipt of billing.
- B. The City agrees to reimburse the Railroad the cost of future maintenance and replacement of the at-grade crossing surface within thirty (30) days of the City's receipt of billing.

Section 13. FUTURE PROJECTS

- A. Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Road Crossing shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.
- B. In the future, the Railroad will have the right to install future track on either side of the existing track(s) in the Crossing Area without securing the City's, or its successors or assigns, approval.

Section 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

- A. City shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.



Section 15. TERMINATION OF ORIGINAL AGREEMENT

Upon the completion of the Roadway, the Original Agreement covering the Road Crossing, (if any), shall terminate and the terms and conditions of this Agreement shall govern the use, maintenance and repair of the Roadway.

Section 16. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directly from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad and (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad. The City also confirms and acknowledges that (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents. The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By _____
JAMES P. GADE
Director Contracts

WITNESS:

CITY OF GILBERT

_____ By _____
Title _____

(Seal)

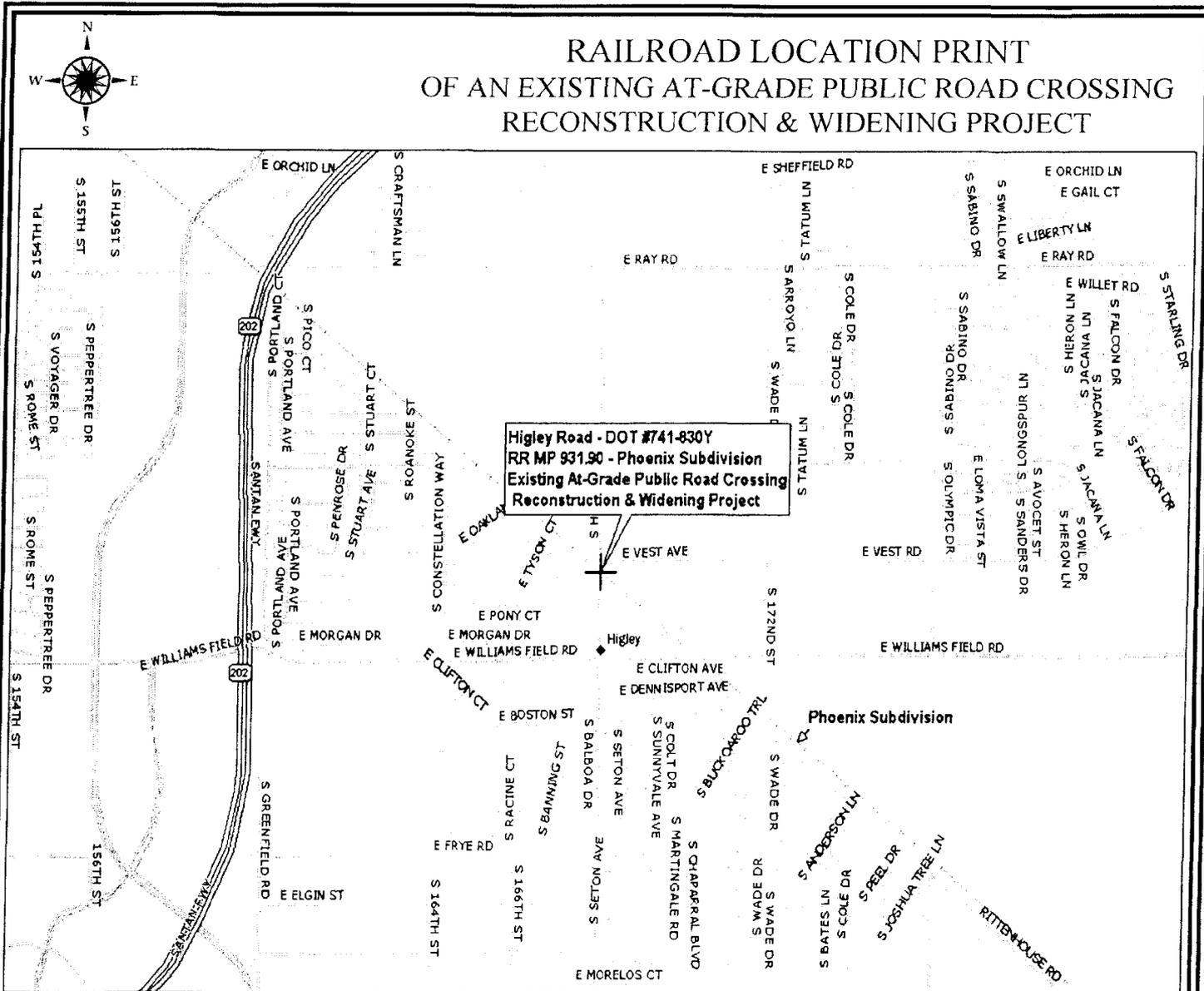
Pursuant to Resolution/Order No. _____
dated: _____, 200__
hereto attached.

EXHIBIT A

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Location Print

RAILROAD LOCATION PRINT OF AN EXISTING AT-GRADE PUBLIC ROAD CROSSING RECONSTRUCTION & WIDENING PROJECT



DELORME

Data use subject to license.
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www.delorme.com

MN (11.0° E)



- RAILROAD WORK TO BE PERFORMED:**
1. Install automatic flashing light crossing signals with gates & cantilevers; and other signal materials & facilities.
 2. Re-lay 400-feet of rail; Install 176-feet of concrete road crossing panels; Install 120 cross ties; Install 3 carloads of ballast; and other track & surface materials.
 3. Engineering Design Review & Flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
MILE POST 931.90
GPS: N 33° 18.6106', W 111° 43.2650'
HIGLEY (GILBERT), MARICOPA CO., AZ.

Railroad Location Print of an existing at-grade public road crossing reconstruction and widening project with the
CITY OF GILBERT.

Folder No. 2599-31 Date: February 25, 2010

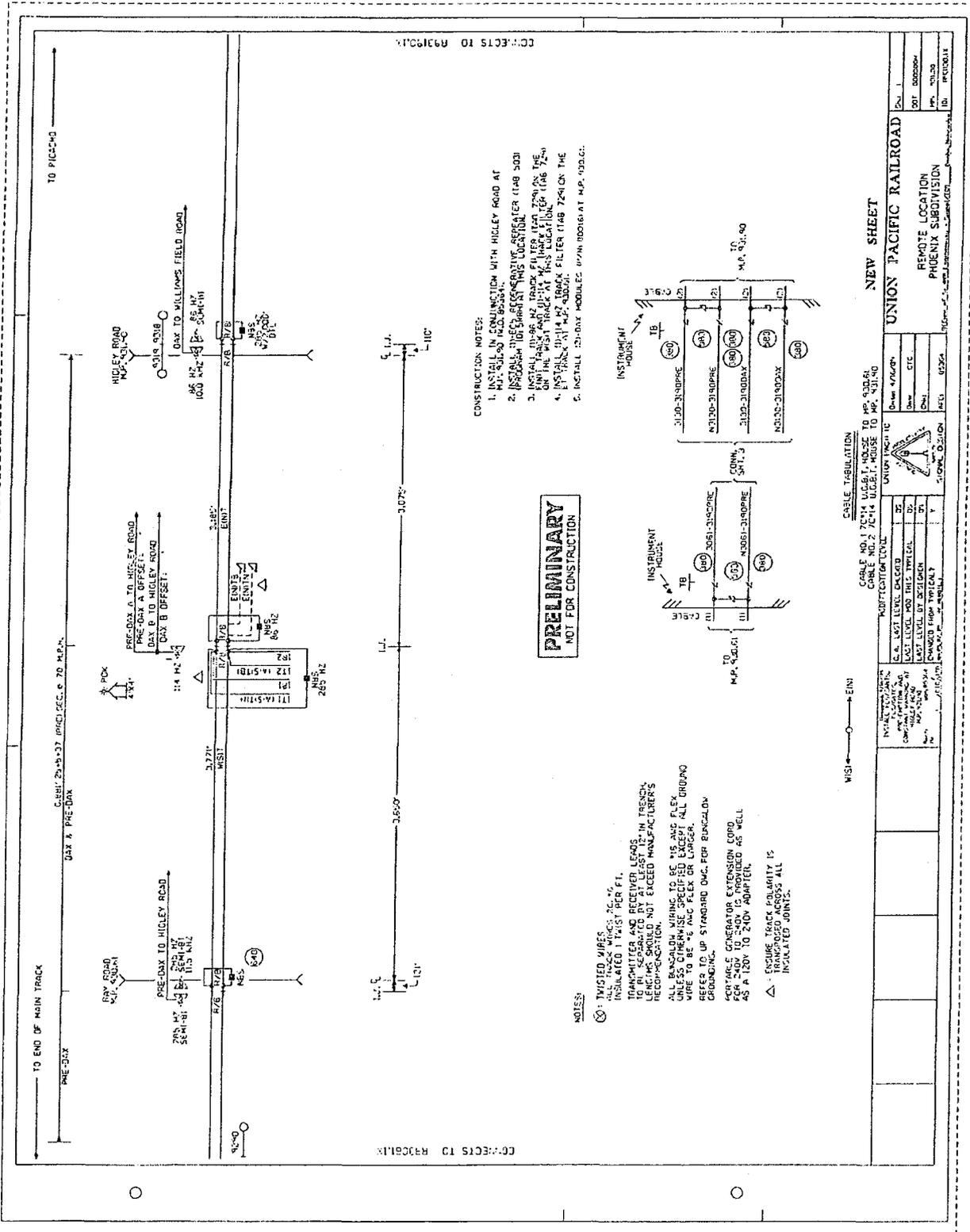
WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-(800) 336-9193

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Detailed Prints

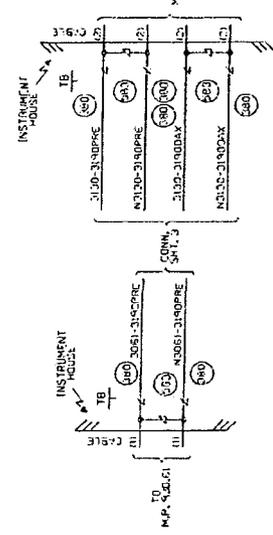


CONNECTIONS TO R3193A.1

- CONSTRUCTION NOTES:
1. INSTALL IN CONJUNCTION WITH HIDLEY ROAD AT M.P. 431.40 AND 431.40.
 2. INSTALL TRACK FILTER (TAB 5031) ON TRACKS 118B AND 118C.
 3. INSTALL TRACK FILTER (TAB 5031) ON TRACKS 118A AND 118B.
 4. INSTALL TRACK FILTER (TAB 5031) ON TRACKS 118C AND 118D.
 5. INSTALL TRACK FILTER (TAB 5031) ON TRACKS 118E AND 118F.

PRELIMINARY
NOT FOR CONSTRUCTION

- NOTES:
- ① TWISTED WIRES INSULATED 1 TWIST PER FT. TRANSMITTER AND RECEIVER LEADS TO BE SEPARATED BY AT LEAST 12-IN. TRENCH RECOMMENDED. NOT EXCEED MANUFACTURER'S SPECIFICATIONS.
 - ALL BANGALOH WIRING TO BE 1/8" AWG FLEX UNLESS OTHERWISE SPECIFIED EXCEPT ALL DRIVING WIRE TO BE #6 AWG FLEX OR LARGER.
 - REFER TO UP STANDARD O.M.C. FOR BANGALOH WIRING.
 - PORTABLE GENERATOR EXTENSION CORDS TO BE USED AS SHOWN AND INSULATED AS WELL AS A 120V TO 240V ADAPTER.
 - △ ENSURE TRACK POLARITY IS MAINTAINED ACROSS ALL INSTALLED JOINTS.



CABLE TABULATION

CABLE NO. 1 TO M.P. 431.40
CABLE NO. 2 TO M.P. 431.40

UNION PACIFIC RAILROAD
PHOENIX SUBDIVISION

NEW SHEET
REMOTE LOCATION
PHOENIX SUBDIVISION

| DATE | BY | DESCRIPTION |
|----------|------|-------------|
| DEC 1950 | W.S. | DESIGN |
| JAN 1951 | W.S. | REVISION |

TO M.P. 431.40

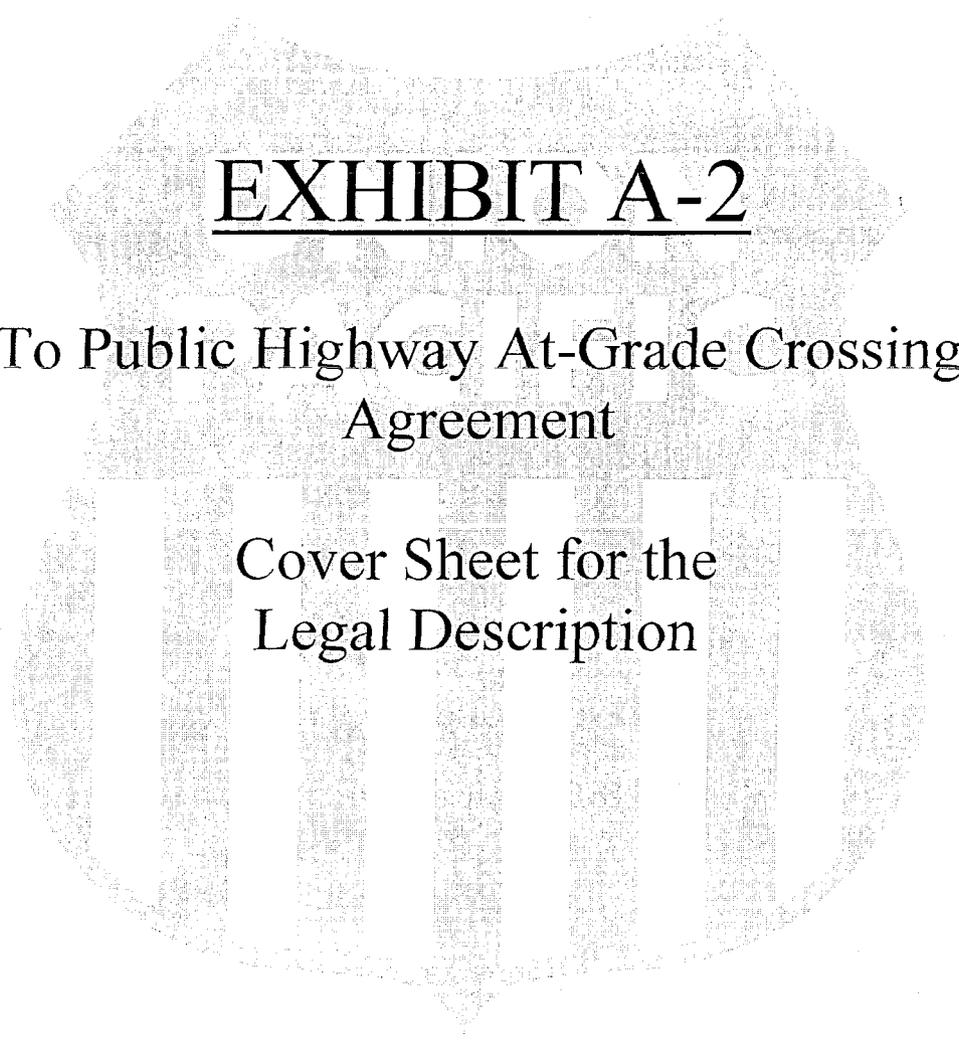


EXHIBIT A-2

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Legal Description

EXHIBIT A
Legal Description
Right-of-Way

A parcel of land located in the Southeast Quarter of Section 27 and the Southwest Quarter of Section 26, Township 1 South, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southwest Corner of said Section 26, a Brass cap in handhole, whence the West Quarter Corner of said Section 26, a Brass cap in handhole, bears N 00° 26' 19" W, a distance of 2637.67 feet;

THENCE along the West line of said Section 26, N 00° 26' 19" W, a distance of 1078.44 feet to the Southerly line of the Union Pacific Railroad Company Right-of-Way (UPROW), according to an Unrecorded map filed in Right-of-Way Serial No. AZPHX-0086615 and to the **TRUE POINT OF BEGINNING**;

THENCE leaving said West line, along said Southerly line N 53° 37' 24" W, a distance of 112.42 feet to the West line of the East 90.00 feet of said Section 27;

THENCE leaving said South line, along said West line, N 00° 26' 19" W, a distance of 249.82 feet, to the Northerly line of said UPROW;

THENCE leaving said West line, along said Northerly line, S 53° 37' 24" E, a distance of 212.35 feet to the East line of the West 80.00 feet of said Section 26;

THENCE leaving said Northerly line, along said East line, S 00° 26' 19" E, a distance of 249.82 feet to said Southerly line;

November 5, 2007
Page 2 of 2

THENCE leaving said East line, along said Southerly line, N 53° 37' 24" W, a distance of 99.93 feet to the **TRUE POINT OF BEGINNING**.

Containing 42,470 square feet (0.97 Ac.) ±.

This Description is located within an area surveyed by AZTEC in May-July 2007. And is based on Maricopa County GDACS. Monumentation as noted in this Description is within acceptable standards (as defined in "Arizona Boundary Survey Minimum Standards") based on said Survey.

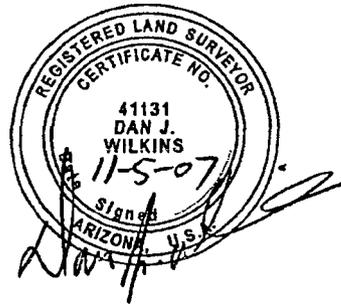


EXHIBIT A-3

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Illustrative Print of Legal Description

8' P.U.E. PER M.O.D.
BOOK 740, PG. 16 M.C.R.

130' R.O.W. PER M.O.D.
BOOK 740, PG. 16 M.C.R.

A.P.N.
304-40-001-V

WEST 1/4 CORNER
SECTION 26, T1S, R6E
MARICOPA COUNTY DEPT. OF
TRANSPORTATION BRASS CAP
IN HAND HOLE

| LINE TABLE | | |
|------------|-------------|----------|
| LINE | BEARING | DISTANCE |
| L1 | N53°37'24"W | 112.42 |
| L2 | N00°26'19"W | 249.82 |
| L3 | S53°37'24"E | 212.35 |
| L4 | S00°26'19"E | 249.82 |
| L5 | N53°37'24"W | 99.93 |

A.P.N. 304-39-905-A

WEST LINE,
EAST 90 FEET
SECTION 27, T1S, R6E

EAST LINE,
WEST 80 FEET
SECTION 26, T1S, R6E

A.P.N.
304-39-010-C

SECTION 27

TRUE POINT
OF BEGINNING

66' ROAD PER DOC.
NO. 85-0357819 M.C.R.

A.P.N. 304-40-009-B



33' R.O.W.

SOUTHWEST CORNER
SECTION 26, T1S, R6E
MARICOPA COUNTY DEPT. OF
TRANSPORTATION BRASS CAP
IN HAND HOLE
(POINT OF COMMENCEMENT)

HIGLEY RD.
1078.44'

A.P.N.
304-39-015-D

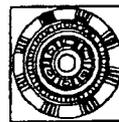
SECTION 26

7' HIGHWAY ESMT, PER
DCKT. 7479, PG. 801 M.C.R.

40' R.O.W.

UNION PACIFIC
RAILROAD
(200' RIGHT-OF-WAY)

LEGAL EXHIBIT
EXHIBIT TO ACCOMPANY EXHIBIT "A"



AZTEC ENGINEERING
4561 E. McDowell Rd., Phoenix, AZ 85008
Tel(602)454-0402 Fax(602)454-0403
website: www.aztec.us

| | | | |
|---------------|---------|-----------|--------------|
| DR: JHN | CK: DJW | SHEET NO. | TOTAL SHEETS |
| DATE: 9-17-07 | | 1 | 1 |
| SCALE: N.T.S | | | |

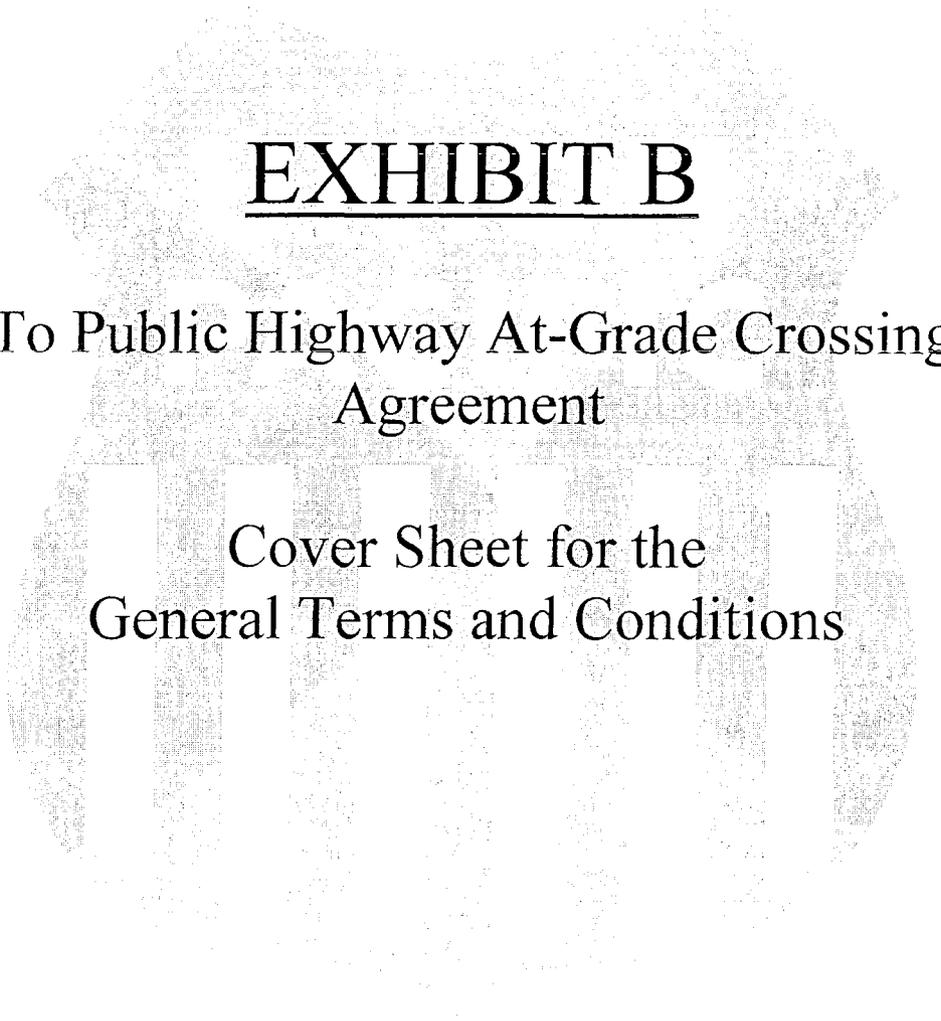


EXHIBIT B

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.
- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the City and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or



of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

- A. The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by the Railroad, at the City's expense.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the City shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. **Compliance With Laws.** The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.
- C. **No Interference or Delays.** The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- D. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by

compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

- E. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- F. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- G. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- H. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- I. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- J. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- K. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

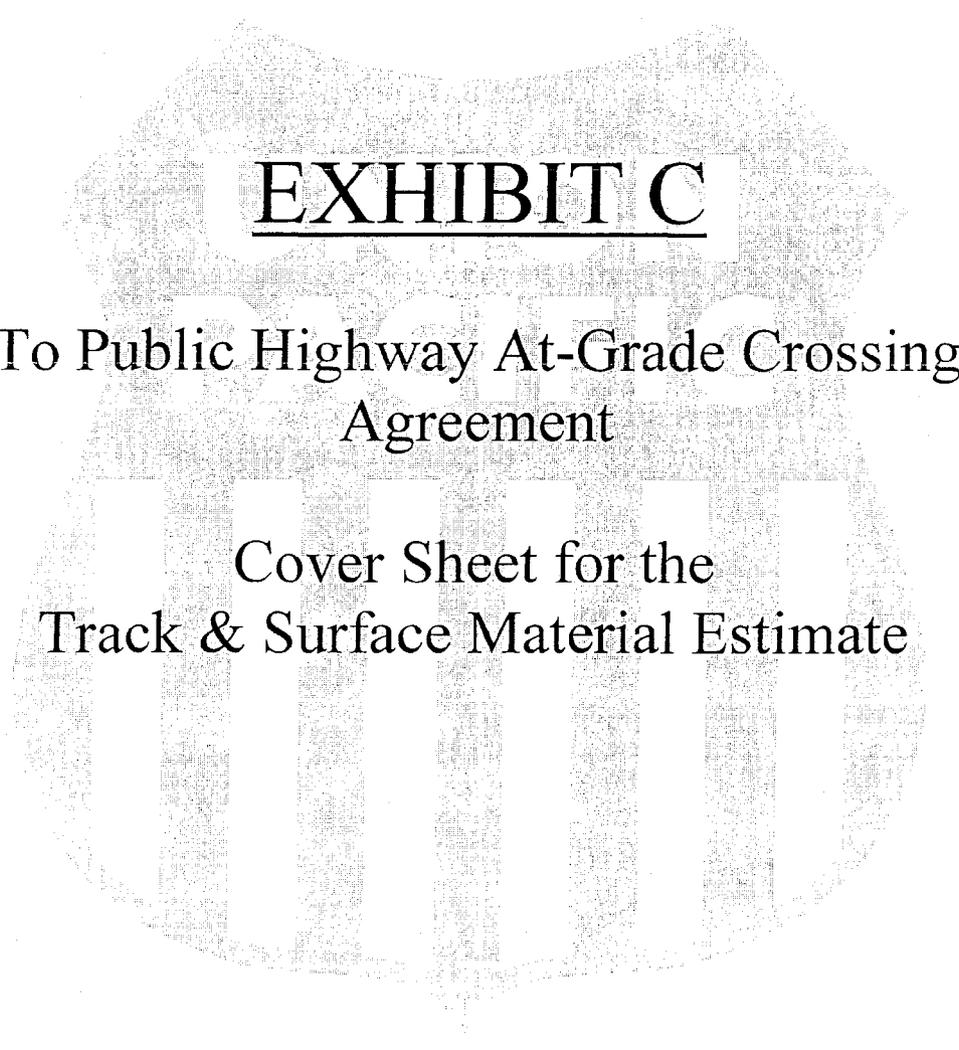


EXHIBIT C

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Track & Surface Material Estimate

DATE: 2009-11-18

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-05-19

DESCRIPTION OF WORK:

RECOLLECT ROAD CROSSING - PHOENIX SUB - MP 931.90 - HIGLEY RD.
100% RECOLLECT FROM TOWN OF GILBERT, AZ., USING FEDERAL ADDITIVES WITH
INDIRECT AND OVERHEAD CONSTRUCTION COST, 205%.
1 XING LOCATION = 176 TF OF CONCRETE CROSSING.
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND OVERHEAD - 205%

PID: 60173 AWO: 85365 MP, SUBDIV: 931.90, PHOENIX
SERVICE UNIT: 16 CITY: HIGLEY STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|------------------------------------|--------|------|--------|----------|--------|------|--------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 10000 | | 10000 | | 10000 |
| LABOR ADDITIVE 205% | | | 20500 | | 20500 | | 20500 |
| TOTAL ENGINEERING | | | 30500 | | 30500 | | 30500 |
| SIGNAL WORK | | | | | | | |
| LABOR ADDITIVE 205% | | | 4169 | | 4169 | | 4169 |
| SALES TAX | | | | 2 | 2 | | 2 |
| SIGNAL | | | 2123 | 70 | 2193 | | 2193 |
| TOTAL SIGNAL | | | 6292 | 72 | 6364 | | 6364 |
| TRACK & SURFACE WORK | | | | | | | |
| BALAST | 3.00 | CL | 2280 | 2163 | 4443 | | 4443 |
| BILL PREP | | | | 900 | 900 | | 900 |
| ENVIRONMENTAL PERMITS | | | | 1 | | 1 | 1 |
| FIELD WELD | | | 349 | | 349 | | 349 |
| HOMELINE FREIGHT | | | | 900 | 900 | | 900 |
| LABOR ADDITIVE 205% | | | 93724 | | 93724 | | 93724 |
| MATL STORE EXPENSE | | | | 568 | 568 | | 568 |
| OTM | | | 3244 | 2984 | 6228 | | 6228 |
| RAIL | 400.00 | LF | 4387 | 7988 | 12375 | | 12375 |
| RDXING | 176.00 | TF | 20764 | 35953 | 56717 | | 56717 |
| SALES TAX | | | | 2433 | 2433 | | 2433 |
| SAW CUT STREET APPROACH | | | | 6000 | 6000 | | 6000 |
| TRAFFIC CONTROL | | | | 20000 | 20000 | | 20000 |
| TRK-SURF, LIN | | | 5134 | | 5134 | | 5134 |
| WELD | | | 11318 | 254 | 11572 | | 11572 |
| XTIE | 120.00 | EA | 27485 | 10579 | 38064 | | 38064 |
| 10% CONTINGENCY | | | | 30000 | 30000 | | 30000 |
| TOTAL TRACK & SURFACE | | | 168685 | 120723 | 289407 | 1 | 289408 |
| LABOR/MATERIAL EXPENSE | | | 205477 | 120795 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 326271 | 1 | |
| ESTIMATED PROJECT COST | | | | | | | 326272 |
| EXISTING REUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| SALVAGE NONUSEABLE MATERIAL CREDIT | | | | | 0 | | |
| RECOLLECTIBLE LESS CREDITS | | | | | | | |

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

□

EXHIBIT C-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Signal Material Estimate

DATE: 2009-11-12

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK

BY THE

UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2010-05-13

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES AND CANTILEVERS AT GILBERT, AZ. HIGLEY RD.
M.P 931.90 ON THE PHOENIX SUB. DOT #741830Y
WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:
SIGNAL & TRACK - TOWN OF GILBERT - 100%
ESTIMATED USING FEDERAL ADDITIVES WITH INDIRECT AND
OVERHEAD ADDITIVES - SIGNAL 167.76% AND TRACK 204.59%

PID: 60172 AWO: 85364 MP,SUBDIV: 931.90, PHOENIX
SERVICE UNIT: 16 CITY: HIGLEY STATE: AZ

| DESCRIPTION | QTY | UNIT | LABOR | MATERIAL | RECOLL | UPRR | TOTAL |
|----------------------------|--------|--------|--------|----------|--------|------|--------|
| ENGINEERING WORK | | | | | | | |
| ENGINEERING | | | 20000 | | 20000 | | 20000 |
| LABOR ADDITIVE 167.76% | | | 41451 | | 41451 | | 41451 |
| SIG-HWY XNG | | | 4821 | | 4821 | | 4821 |
| TOTAL ENGINEERING | | | 66272 | | 66272 | | 66272 |
| SIGNAL WORK | | | | | | | |
| BILL PREP | | 900 | | | 900 | | 900 |
| BRIDGE CONDUIT | | | | 3000 | 3000 | | 3000 |
| CANTILEVERS | | | | 24624 | 24624 | | 24624 |
| CONTRACT | | | | 15397 | 15397 | | 15397 |
| LABOR ADDITIVE 167.76% | | 237888 | | | 237888 | | 237888 |
| MATL STORE EXPENSE | | | | 5 | 5 | | 5 |
| METER SERVICE | | | | 15000 | 15000 | | 15000 |
| PERSONAL EXPENSES | | | | 78900 | 78900 | | 78900 |
| ROCK/GRAVEL/FILL | | | | 1500 | 1500 | | 1500 |
| SALES TAX | | | | 6158 | 6158 | | 6158 |
| SIGNAL | 140903 | | 153970 | | 294873 | | 294873 |
| TRANSP/IB/OB/RCLW CONTR | | | 23791 | | 23791 | | 23791 |
| TOTAL SIGNAL | | | 379691 | 322345 | 702036 | | 702036 |
| TRACK & SURFACE WORK | | | | | | | |
| ENVIRONMENTAL-PERMITS | | | | 1 | 1 | | 1 |
| FIELD WELD | | 100 | | | 100 | | 100 |
| LABOR ADDITIVE 204.59% | | 4004 | | | 4004 | | 4004 |
| MATL STORE EXPENSE | | | | 166 | 166 | | 166 |
| OTM | | 1863 | 5030 | | 6893 | | 6893 |
| SALES TAX | | | | 221 | 221 | | 221 |
| WELD | | | | 508 | 508 | | 508 |
| TOTAL TRACK & SURFACE | | | 5967 | 5926 | 11893 | | 11893 |
| LABOR/MATERIAL EXPENSE | | | 451930 | 328271 | | | |
| RECOLLECTIBLE/UPRR EXPENSE | | | | | 780201 | 0 | |
| ESTIMATED PROJECT COST | | | | | | | 780201 |

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

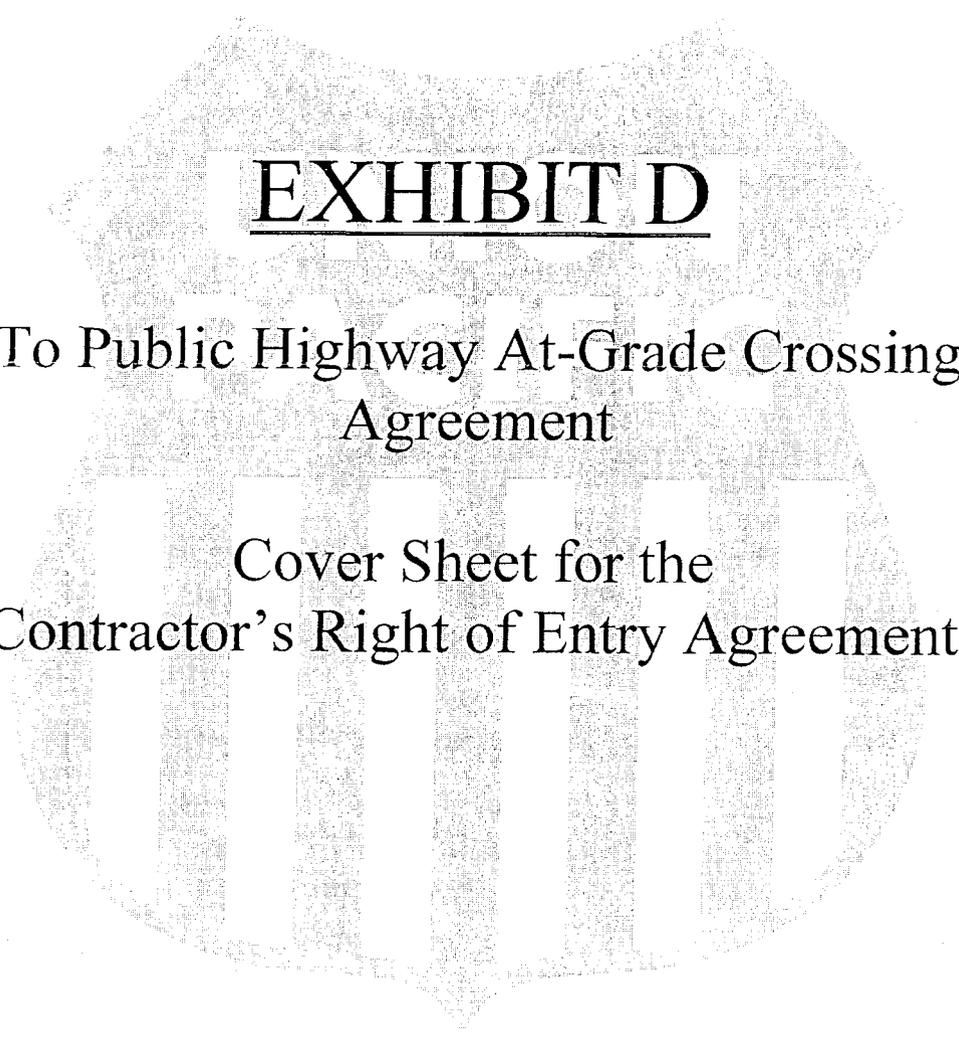


EXHIBIT D

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement



February 25, 2010

UPRR Folder No.: 2599-31

To the Contractor:

Before Union Pacific Railroad Company can permit you to perform work on its property for the reconstruction and widening of the existing Higley Road at-grade public road crossing, it will be necessary for you to complete and execute two originals of the enclosed Contractor's Right of Entry Agreement. Please:

1. Fill in the complete legal name of the contractor in the space provided on Page 1 of the Contractor's Right of Entry Agreement. If a corporation, give the state of incorporation. If a partnership, give the names of all partners.
2. Fill in the date construction will begin and be completed in Article 5, Paragraph A.
3. Fill in the name of the contractor in the space provided in the signature block at the end of the Contractor's Right of Entry Agreement. If the contractor is a corporation, the person signing on its behalf must be an elected corporate officer.
4. Execute and return all copies of the Contractor's Right of Entry Agreement together with your Certificate of Insurance as required in Exhibit B, in the attached, self-addressed envelope.
5. Include a check made payable to the Union Pacific Railroad Company in the amount of **\$500.00**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit B of the enclosed Contractor's Right of Entry Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. If you decide that acquiring this coverage from the Railroad is of benefit to you, please contact Mr. Mike McGrade of Marsh USA @ 800-729-7001, e-mail: william.j.smith@marsh.com.

This agreement will not be accepted by the Railroad Company until you have returned all of the following to the undersigned at Union Pacific Railroad Company:

1. Executed, unaltered duplicate original counterparts of the Contractor's Right of Entry Agreement;
2. Your check in the amount of \$500.00 to pay the required balance due of the required Contractor's Right of Entry fee. (The Folder Number and the name "Paul G. Farrell" should be written on the check to insure proper credit). If you require formal billing, you may consider this letter as a formal bill;

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
fax: 402.501.0340



3. Copies of all of your **up-to-date** General Liability, Auto Liability & Workman's Compensation Insurance Certificates (*yours and all contractors'*), naming Union Pacific Railroad Company as additional insured;
4. Copy of your **up-to-date** Railroad Protective Liability Insurance Certificate (*yours and all contractors'*), naming Union Pacific Railroad Company as additional insured.

**RETURN ALL OF THESE REQUIRED ITEMS TOGETHER IN ONE ENVELOPE.
DO NOT MAIL ANY ITEM SEPARATELY.**

If you have any questions concerning this agreement, please contact me as noted below. Have a safe day!

Paul G. Farrell
Senior Manager Contracts
Phone: (402) 544-8620
e-mail: pgfarrell@up.com

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
fax: 402.501.0340

UPRR Folder No.: 2599-31

UPRR Audit No.: _____

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 200____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

(NAME OF CONTRACTOR)
a _____ corporation ("Contractor").
(State of Corporation)

RECITALS:

Contractor has been hired by the *City of Gilbert* ("City") to perform work relating to the reconstruction and widening of the existing Higley Road at-grade public road crossing (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post 931.90 on the Railroad's Phoenix Subdivision in (Higley) Gilbert, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, and as specified on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between the Railroad and the City.
(Date of Contract)

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those

portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Contractor's Insurance Requirements in **Exhibit C** and the Minimum Safety Requirements in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Mike Battista
Manager Track Maintenance
Union Pacific Railroad Company
1255 South Campbell Avenue
Tucson, AZ 85713
Phone: 602-322-2506
Fax: 602-322-2515

John Clark
Manager Signal Maintenance
Union Pacific Railroad Company
301 Gila Street
Yuma, AZ 85364
Phone: 925-343-4563
Fax: 928-343-4558

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or
(Expiration Date)
at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2599-31*

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

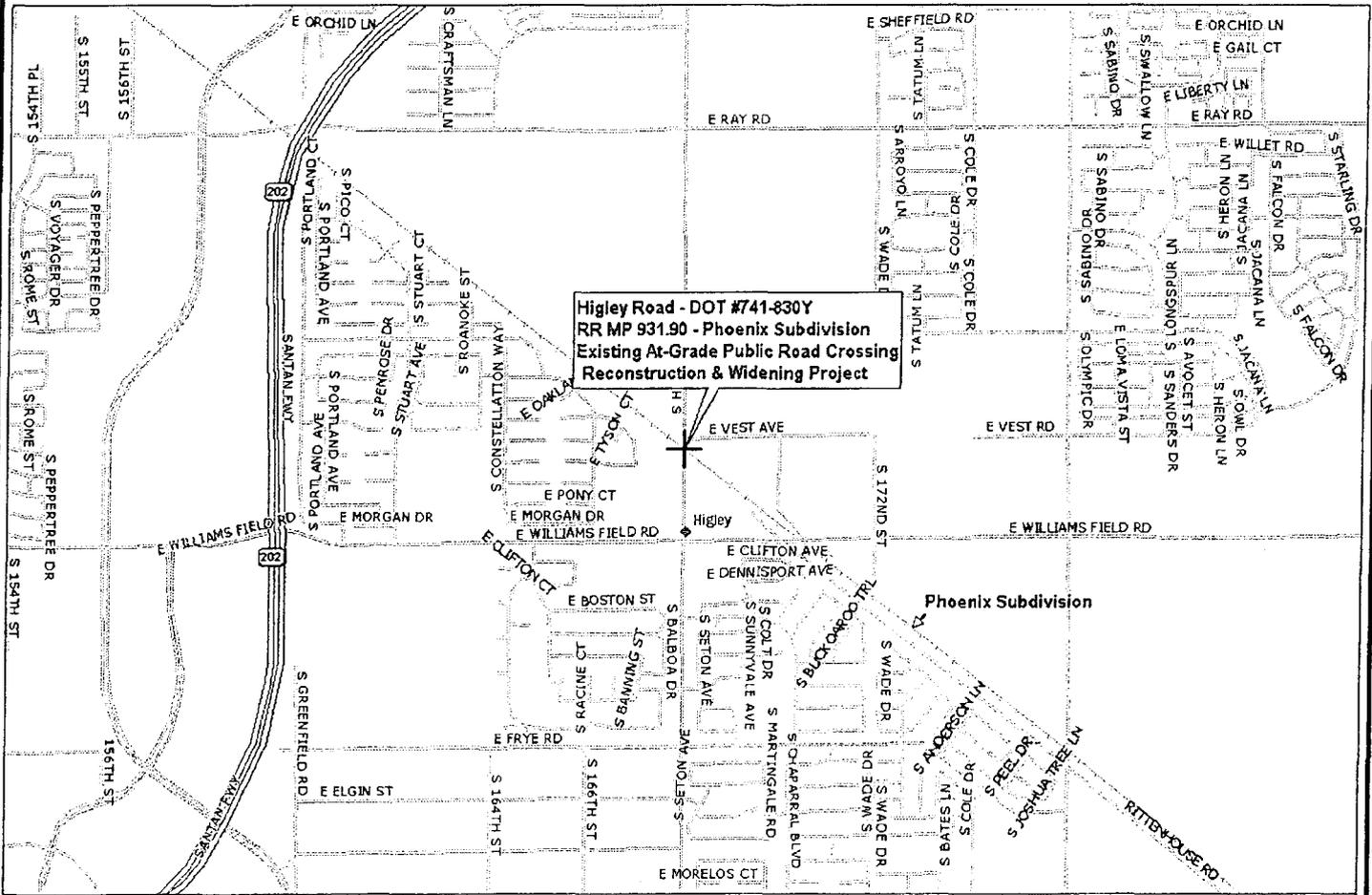
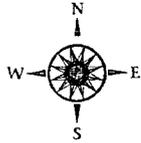
By: _____
PAUL G. FARRELL
Senior Manager Contracts

(Name of Contractor)

By _____

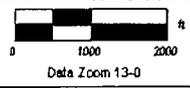
Title: _____

RAILROAD LOCATION PRINT ACCOMPANYING A CONTRACTOR'S RIGHT OF ENTRY AGREEMENT



DELORME
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www.delorme.com

MN (11.0° E)



RAILROAD WORK TO BE PERFORMED:

1. Install automatic flashing light crossing signals with gates & cantilevers; and other signal materials & facilities.
2. Re-lay 400-feet of rail; Install 176-feet of concrete road crossing panels; Install 120 cross ties; Install 3 carloads of ballast; and other track & surface materials.
3. Engineering Design Review & Flagging.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
MILE POST 931.90
GPS: N 33° 18.6106', W 111° 43.2650'
HIGLEY (GILBERT), MARICOPA CO., AZ.

To accompany Contractor's Right of Entry Agreement with

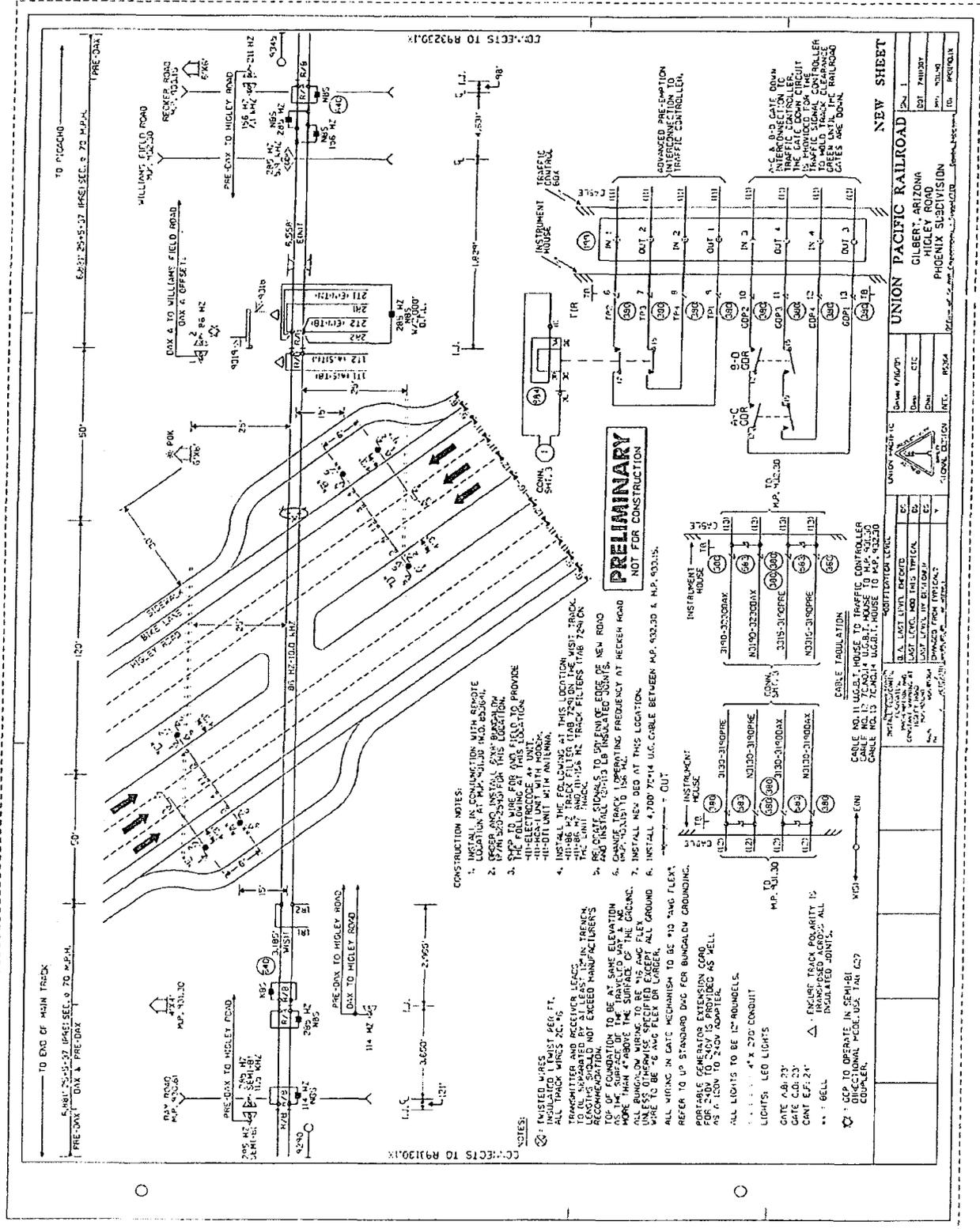
(Name of Contractor)
for an existing at-grade public road crossing
reconstruction and widening project.

Folder No. 2599-31

Date: February 25, 2010

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE
PHONE: 1-(800) 336-9193



- CONSTRUCTION NOTES:**
1. INSTALL IN CONJUNCTION WITH REMOTE LOCATION AT M.P. 431.30 TO 431.34.
 2. REFER TO R93239.1X FOR THIS LOCATION.
 3. STOP TO WIRE FOR AND FIELD TO PROVIDE THE FOLLOWING AT THIS LOCATION:
 - 11-OUT UNIT WITH ANTENNA.
 - 11-OUT UNIT WITH ANTENNA.
 4. INSTALL THE FOLLOWING AT THIS LOCATION:
 - 11-8E M2 TRACK FILTER (TAB 724) ON THE VISIT TRACK.
 - 11-8E M2 TRACK FILTER (TAB 724) ON THE VISIT TRACK.
 - 11-8E M2 TRACK FILTER (TAB 724) ON THE VISIT TRACK.
 5. CHANGE TRACKS TO SUPPLY EDGE OF NEW ROAD.
 6. CHANGE TRACKS TO SUPPLY FREQUENCY AT RECKH ROAD.
 7. INSTALL NEW DEE AT THIS LOCATION.
 8. INSTALL 4,700 FT. 14 U.C. CABLE BETWEEN M.P. 432.30 & M.P. 433.35.

- NOTES:**
- 1. INSULATED WIRE.
 - 2. INSULATED WIRE PER FT.
 - 3. ALL TRACK WIRE 20.15.
 - 4. TRANSMITTER AND RECEIVER LEADS.
 - 5. LEADS TO BE MADE BY SLEAZER.
 - 6. LEADS TO BE MADE BY SLEAZER.
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NEW SHEET

UNION PACIFIC RAILROAD
 GILBERT, ARIZONA
 HIGHLEY ROAD
 PHOENIX SUBDIVISION

SHEET 1

DATE: 7/10/37
 DRAWN: [Name]
 CHECKED: [Name]
 APPROVED: [Name]

CONSTRUCTION NOTES

1. ALL TRACK WIRE 20.15.

2. TRANSMITTER AND RECEIVER LEADS.

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EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS AND CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery

and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (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 Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "loss") incurred by any person (including, without limitation, any indemnified party, contractor, or any employee of contractor or of any indemnified party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the loss, and shall apply regardless of any negligence or strict liability of any indemnified party, except where the loss is caused by the sole active negligence of an indemnified party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any indemnified party shall not bar the recovery of any other indemnified party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the federal employers' liability act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any indemnified party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

CONTRACTOR'S INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. **Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site, and
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability Insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. **Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. **Umbrella or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. **Pollution Liability Insurance.** Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of 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 from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. *Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.*
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. *Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.*
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's

ORIGINAL

1 **COMMISSIONERS**
2 KRISTIN K. MAYES, CHAIRMAN
3 GARY PIERCE
4 PAUL NEWMAN
5 SANDRA D. KENNEDY
6 BOB STUMP

RECEIVED
2010 JUL 15 P 3:47

AZ CORP COMMISSION
DOCKET CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

6 IN THE MATTER OF THE APPLICATION
7 OF THE TOWN OF GILBERT TO
8 UPGRADE A CROSSING OF THE UNION
9 PACIFIC RAILROAD AT HIGLEY ROAD
10 IN THE TOWN OF GILBERT, MARICOPA
11 COUNTY, ARIZONA, AAR/DOT NO. 741-
12 830-Y.

DOCKET NO. RR-03639A-10-0208

**NOTICE OF FILING AFFIDAVIT OF
PUBLICATION**

11 The Town of Gilbert ("Gilbert"), by and through undersigned counsel, hereby files
12 its Notice of Affidavit of Publication. The publication was made July 12, 2010 rather than by July
13 2, 2010 as required by the June 1, 2010 Procedural Order. A copy of the Affidavit of Publication
14 is attached hereto. Gilbert also confirms that it has provided a copy of the Application and the
15 June 1, 2010 Procedural Order to the Union Pacific Railroad and to surrounding adjacent property
16 owners via certified mail. There is no interested municipality other than Gilbert.
17

18 DATED this 15th day of July, 2010.

19 CURTIS, GOODWIN, SULLIVAN,
20 UDALL & SCHWAB, P.L.C.

21 Arizona Corporation Commission
22 **DOCKETED**
23 JUL 15 2010

21 By: 
22 William P. Sullivan
23 Kelly Y. Schwab
24 501 East Thomas Road
25 Phoenix, Arizona 85012-3205
Attorneys for the Town of Gilbert

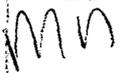
DOCKETED BY 

EXHIBIT
tabbles
A-2
ADMITTED

1 PROOF OF AND CERTIFICATE OF MAILING

2 I hereby certify that on this 15th day of July, 2010, I caused the foregoing document
3 to be served on the Arizona Corporation Commission by delivering the original and thirteen (13)
4 copies of the above to:

5 Docket Control
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

9 COPY of the foregoing hand delivered
10 this 15th day of July, 2010 to:

11 Janice Alward, Chief Counsel
12 Legal Division
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, Arizona 85007

16 Steve Olea, Director
17 Utilities Division
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 Lyn Farmer, ALJ
22 Hearing Division
23 Arizona Corporation Commission
24 1200 West Washington Street
25 Phoenix, Arizona 85007

Brian Lehman, Chief
Railroad Safety Section of the Safety
Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing mailed
this 15th day of July, 2010 to:

Aziz Amam, Manger of Special Projects
Union Pacific Railroad Company
2073 East Jade Drive
Chandler, Arizona 85286

Anthony J. Hancock
Terrance L. Sims
Beaugureau, Zukowski, Hancock,
Stoll & Schwartz, PC
302 East Coronado
Phoenix, Arizona 85004
Attorneys for Union Pacific Railroad
Company

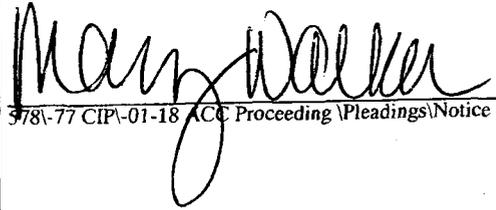
Robert Travis, P.E.
State Railroad Liaison
Arizona Department of Transportation
205 South 17th Avenue, Room 357
MD 681E
Phoenix, Arizona 85007

Paul Mood
Town of Gilbert
90 East Civic Center Drive
Gilbert, Arizona 85296

Robert Lyons, P.E.
Aztec Engineering
4561 East McDowell Road
Phoenix, Arizona 85008

1 Kelly Roy, Utility Project Coordinator
2 Maricopa County Department of Transportation
3 2901 West Durango Street
4 Phoenix, Arizona 85009

4 Chris Watson
5 2200 North Central Avenue
6 Suite 300
7 Phoenix, Arizona 85004

7 
8

978-77 CIP-01-18 ACC Proceeding \Pleadings\Notice of Filing - Aff of Pub.doc

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IN THE MATTER OF THE AP-
PLICATION OF THE TOWN
OF GILBERT TO UPGRADE A
CROSSING OF THE UNION
PACIFIC RAILROAD AT
HIGLEY ROAD IN THE TOWN
OF GILBERT, MARICOPA
COUNTY, ARIZONA.
AAR/DOT NO. 741-830-Y.

(DOCKET NO.
RR-02639A-10-0286)

On May 20, 2010, the Town
of Gilbert ("Town") filed
with the Arizona Corpora-
tion Commission ("Commis-
sion") an application for ap-
proval for the Union Pacific
Railroad ("Railroad") to up-
grade an existing crossing
at Higley Road in the Town
of Gilbert, Maricopa County,
Arizona at AAR/DOT No.
741-830-Y.

The application is available
for inspection during regu-
lar business hours at the of-
fices of the Commission in
Phoenix, at 1200 West
Washington Street, Phoenix,
Arizona, and on the internet
via the Commission website
(www.azcc.gov) using the
e-docket function.

The Commission will hold a
hearing on this matter com-
mencing on August 10, 2010,
at 10:00 a.m., at the Com-
mission's offices, 1200 West
Washington Street, Phoenix,
Arizona. Public comments
will be taken on the first
day of the hearing.

The law provides for an
open public hearing at
which, under appropriate
circumstances, interested
parties may intervene. In-
tervention shall be permit-
ted to any person entitled
by law to intervene and hav-
ing a direct and substantial
interest in the matter. Per-
sons desiring to intervene
must file a written motion
to intervene with the Com-
mission, which motion
should be sent to Applicant
or its counsel and to all par-
ties of record, and which, at
the minimum, shall contain
the following:

1. The name, address, and
telephone number of the
proposed intervenor and of
any party upon whom serv-
ice of documents is to be
made if different than the
intervenor.
2. A short statement of the
proposed intervenor's inter-
est in the proceeding (e.g., a
customer of Railroad, a
neighboring property own-
er, a crossing user, etc.).
3. A statement certifying
that a copy of the motion to
intervene has been mailed
to the Applicant or its coun-
sel and to all parties of re-
cord in the case.

The granting of motions to
intervene shall be governed
by A.A.C. R14-3-105, except
that all motions to intervene
must be filed on or before
July 16, 2010. The granting
of intervention, among oth-
er things, entitles a party to
present sworn evidence at
hearing and to cross-
examine other witnesses.
However, failure to inter-
vene will not preclude any
customer from appearing at
the hearing and making a
statement on such custom-
er's own behalf.

If you have any questions
about this application, you
may contact the applicant
Edgar Medina at 480-503-
6754. If you wish to file writ-
ten comments on the appli-
cation or want further infor-
mation on intervention, you
may write the Consumer
Services Section of the
Commission at 1200 West
Washington Street, Phoenix,
Arizona 85007, call 602-542-
4251 or 1-800-222-7000, or
appear at the hearing and
make comment.

The Commission does not
discriminate on the basis of
disability in admission to its
public meetings. Persons
with a disability may re-
quest a reasonable accom-
modation such as a sign
language interpreter, as
well as request this docu-
ment in an alternative for-
mat, by contacting Carolyn
Buck, ADA Coordinator,

voice phone number 602-
542-3931, e-mail

CDuck@azcc.gov. Re-
quests should be made as
early as possible to allow
time to arrange the accom-
modation.

Published: July 12, 2010

AFFIDAVIT OF PUBLICATION



THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Mark Gilmore, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

July 12, 2010

Sworn to before me this
12TH day of
July A.D. 2010

Notary Public

| FHWA SECTION | STATE | PROJ. NO. | NO. | TOTAL | AS BUILT |
|--------------|-------|-----------|-----|-------|----------|
| 9 | ARIZ | 5062 | | | |

AZTEC

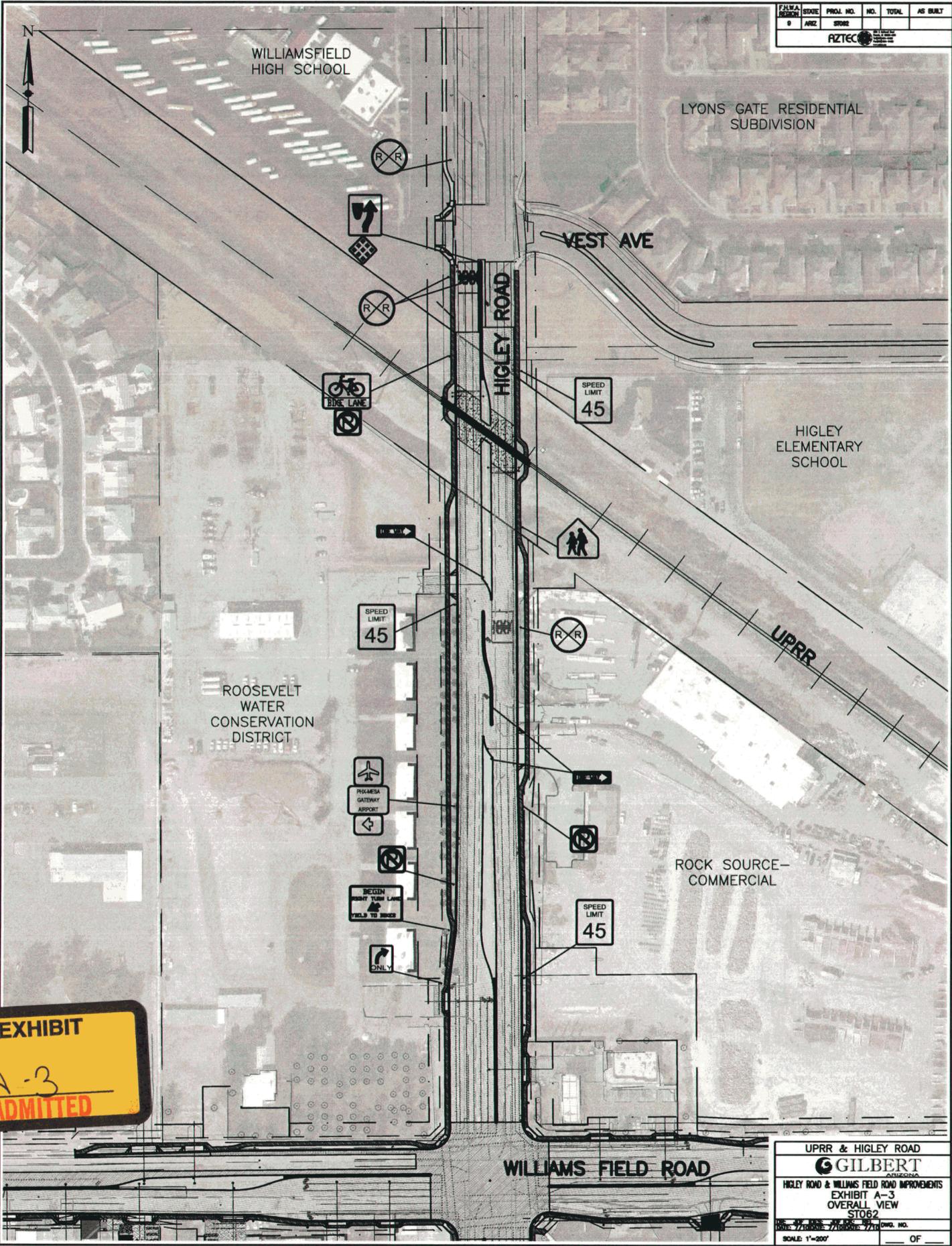


EXHIBIT
A-3
ADMITTED

UPRR & HIGLEY ROAD

GILBERT
 ARIZONA

HIGLEY ROAD & WILLIAMS FIELD ROAD IMPROVEMENTS
 EXHIBIT A-3
 OVERALL VIEW
 ST062

DATE: 7/16/10 7:10 AM DWG. NO. _____ OF _____

SCALE: 1"=200'

| FALWA REGION | STATE | PROJ. NO. | NO. | TOTAL | AS BUILT |
|--------------|-------|-----------|-----|-------|----------|
| 9 | AZ | ST082 | | | |

AZTEC

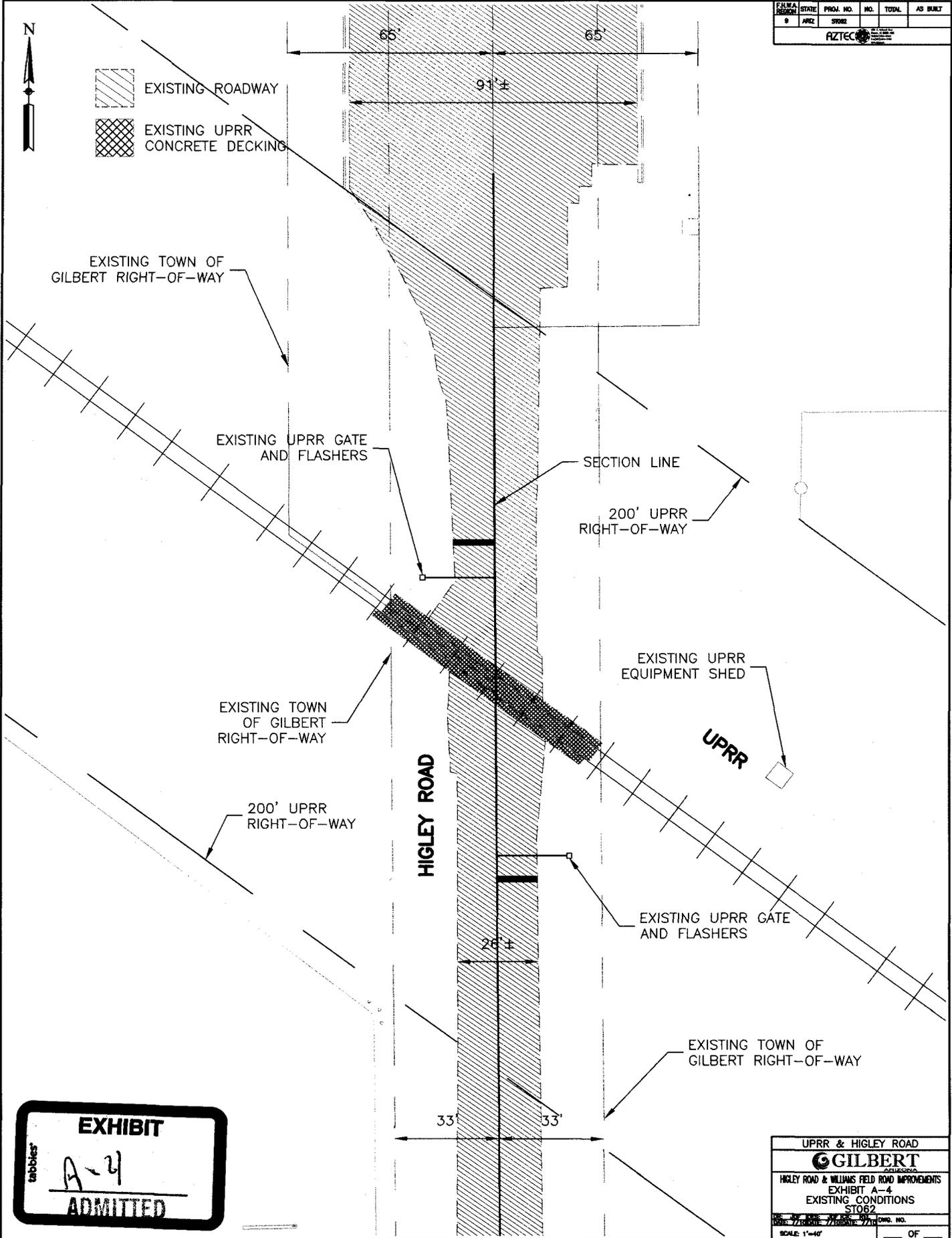


EXHIBIT
 tabbles
 A-4
 ADMITTED

| | |
|--|--------------|
| UPRR & HIGLEY ROAD | |
| GILBERT | |
| HIGLEY ROAD & WILLIAMS FIELD ROAD IMPROVEMENTS | |
| EXHIBIT A-4 | |
| EXISTING CONDITIONS | |
| ST082 | |
| DATE OF ISSUE | DATE OF REV. |
| BY | BY |
| SCALE: 1"=40' | OF |

| FEDERAL AID DISTRICT | STATE | PROJ. NO. | NO. | TOTAL | AS BUILT |
|----------------------|-------|-----------|-----|-------|----------|
| 8 | ARIZ | ST062 | | | |

AZTEC

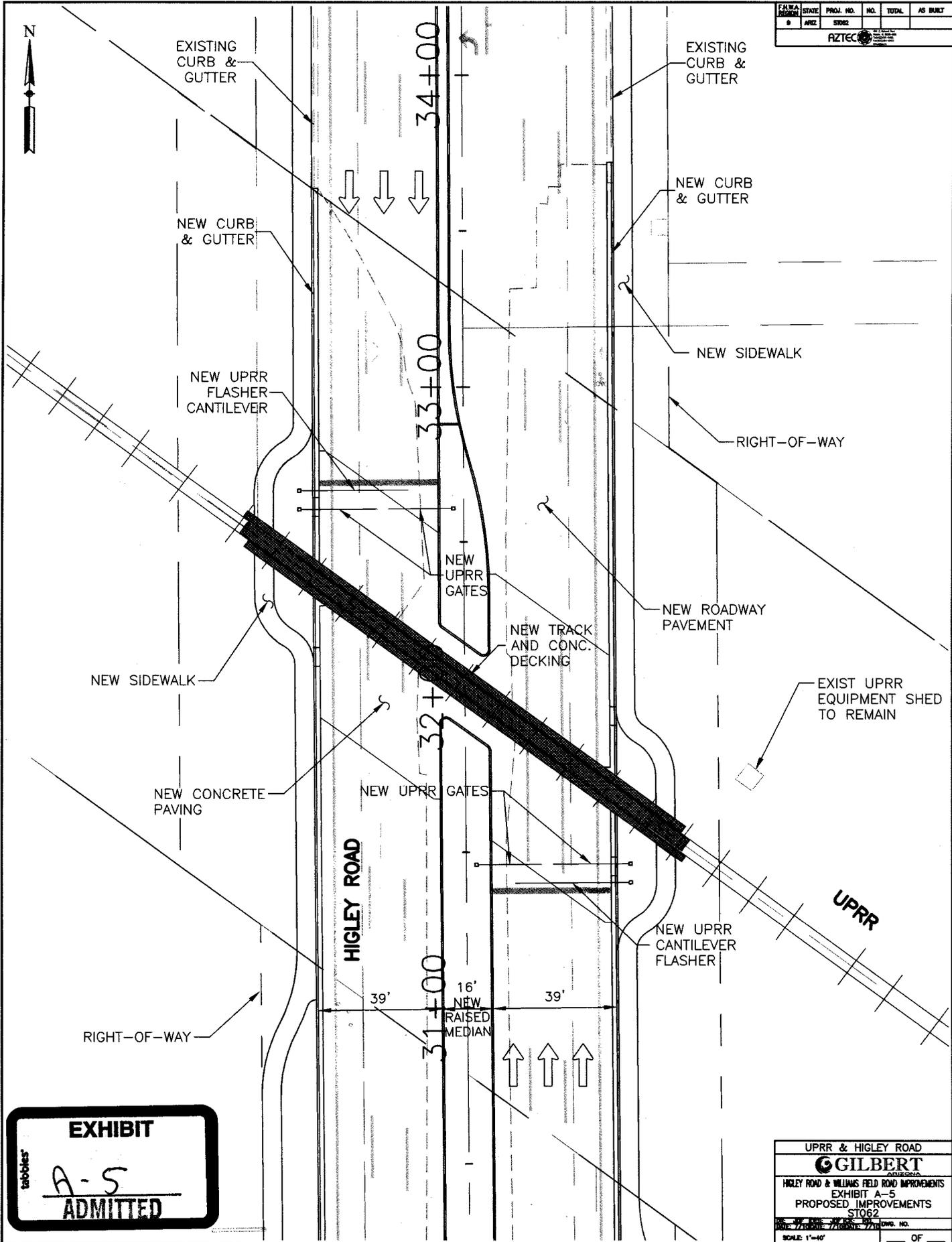


EXHIBIT
 A-5
 ADMITTED

| | |
|---|----------|
| UPRR & HIGLEY ROAD | |
| GILBERT ARIZONA | |
| HIGLEY ROAD & WILLIAMS FIELD ROAD IMPROVEMENTS EXHIBIT A-5 PROPOSED IMPROVEMENTS ST062 | |
| DATE: 7/10/10 | DWG. NO. |
| SCALE: 1"=40' | OF |

FILE COPY

STAFF MEMORANDUM



To: THE COMMISSION

RECEIVED

From: Steven M. Olea
Interim Director
Safety Division

JUL 23 2010

2010 JUL 22 P 4: 20

Date: July 23, 2010

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

RE: IN THE MATTER OF THE APPLICATION OF THE TOWN OF GILBERT TO UPGRADE A CROSSING OF THE UNION PACIFIC RAILROAD AT HIGLEY ROAD IN THE TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, USDOT NO. 741-830-Y.

DOCKET NO. RR-03639A-10-0208

Background

On May 20, 2010, the Town of Gilbert ("Town") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Higley Road in the Town of Gilbert, Maricopa County, Arizona at USDOT No. 741-830-Y.

Commission Railroad Safety Staff ("Staff") records indicate, the presence of automatic warning devices at Higley Road as far back as June 5, 1974.

On August 27, 2007, Staff, the Railroad, Aztec Engineering (consultants to the Town), and the Town participated in diagnostic review of the proposed improvements at Higley Road. All parties present were in agreement to the proposed improvements at the crossing. The following is a break down of the crossing in this application, including information about the crossing that was provided to Staff by the Town and its consultants.

Geographical Information

Incorporated on July 6, 1920, Gilbert is a relatively new community that has seen tremendous growth during the past two decades. Gilbert has experienced a rapid transition from a historically agriculture-based community to an urban center and suburb in the Phoenix Metropolitan Area. In the last two decades, Gilbert has grown at a pace unparalleled by most communities in the United States, increasing in population from 5,717 in 1980 to over 215,000 in April, 2009.

The rail line in this area runs in a southeast to northwest direction. Higley Road is a north to south main arterial through the Town. The general area surrounding the Higley Road crossing is a mix of commercial, residential and industrial businesses (see Exhibit A). 1.9 miles to the southeast of the Higley Road crossing, there is the proposed Cooley Station Master Planned Community: however it is unclear to Staff when construction will begin. It will be a mixed residential and commercial development to include single family homes, town homes, apartments and a K-8 school. The commercial site is assumed to have general retail stores.

Higley Road

The existing roadway is a paved two lane road. The proposed project includes widening the roadway to six lanes with a 16-foot wide raised median. The Town's proposed upgrades will replace the existing incandescent flashing lights, gate mechanisms, bells and detection circuitry, with the latest in industry standards to include: 12-inch LED flashing lights, cantilevers with 12-inch LED flashing lights, median and curb-side automatic gates, bells, and constant warning time circuitry. A new concrete crossing surface will be added, along with replacing any impacted pavement markings. The proposed measures are consistent with safety measures employed at similar at-grade crossings in the State. The estimated cost of the proposed railroad crossing upgrade is \$1,245,473. The Town is paying for the entire cost of the crossing improvements. The Railroad will maintain the warning devices and the crossing surface.

Traffic data for Higley Road was taken from the Town's webpage, (www.ci.gilbert.az.us/traffic/counts08.cfm). The data shows the Average Daily Traffic ("ADT") for 2009 to be 17,823, vehicles per day ("vpd"). Additional data indicates the estimated ADT for the year 2030 to be 52,000 vpd (August 16, 2006; revised November 16, 2006, Cooley Station Traffic Impact Study, by Task Engineering). The current Level of Service ("LOS") for Higley Road is LOS F. The projected LOS after the proposed improvements will be LOS A.

The American Association of State Highway and Transportation Officials ("AASHTO") Geometric Design of Highways and Streets, 2004, states that the Level of Service characterizes the operating conditions on a facility in terms of traffic performance measures related to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. This is a measure of roadway congestion ranging from LOS A--least congested--to LOS F--most congested. LOS is one of the most common terms used to describe how "good" or how "bad" traffic is projected to be.

The posted speed limit on Higley Road is 45MPH. Staff records, as well as Federal Railroad Administration ("FRA") accident/incident records, indicate one accident at this crossing on July 8, 2007, in which a vehicle drove through the downed gates and struck the train.

Alternative routes from this crossing are as follows; to the northwest approximately 1.5 miles is Ray Road, an at-grade crossing, and to the southeast approximately a third of a mile is the Williams Field Road crossing, also an at-grade crossing.

Train Data

Data provided by the Town regarding train movements through this crossing are as follows:

Train Count: 6 total average trains per day (all freight trains/no passenger trains)

Train Speed: 60 mph

Thru Freight/Switching Moves: All movements through this crossing are thru freight.

Schools and Bus Routes

The Higley Road crossing is within the limits of two school districts. The Higley Unified School District No. 60, and the Gilbert Unified School District No. 41. The following schools are located within a three mile radius of the crossing:

Elementary Schools:

- ✓ Higley Elementary – 3391 E Vest Avenue
- ✓ Chaparral Elementary – 3380 E Frye
- ✓ Ashland Ranch Elementary – 1918 S. Ashland Ranch Road.
- ✓ Eagles Aerie School – 17019 S Greenfield Rd
- ✓ Gateway Pointe Elementary – 2069 S De La Torre Drive
- ✓ Neely Academy – 321 W. Juniper Avenue
- ✓ Coronado Elementary – 4333 S Deanza Blvd
- ✓ Power Ranch Elementary – 4351 S Ranch House Parkway
- ✓ San Tan Elementary – 3443 E Calistoga Dr
- ✓ Finley Farms Elementary – 375 S. Columbus Drive
- ✓ Spectrum Elementary – 2846 S. Spectrum way
- ✓ Highland Park Elementary – 230 N. Cole Drive

High Schools

- ✓ Higley High School - 4068 E Pecos
- ✓ Gilbert High School - 1101 E. Elliot Road
- ✓ Mesquite Senior High School – 500 S. McQueen Road
- ✓ Highland High School – 4301 E. Guadalupe Road
- ✓ Gilbert Christian – 1424 S. Promenade Lane
- ✓ Desert Hills High School – 1515 S. Val Vista Drive
- ✓ Williams Field High School – 2076 S Higley

The construction of a new Higley School District transportation center and bus maintenance depot, which is located approximately 300 feet north of the crossing on the west side of Higley Road was completed in April of 2009. Access to the new facility is from the signalized intersection of Vest Ave and Higley Road immediately north of the rail crossing. According to Mike McGuire, Transportation Routing Coordinator for the Higley School District, there are 136 daily school bus trips over this crossing. The bus trip information was given to the Town's contractor approximately 18 months ago. On July 19, 2010, Staff verified with Mr. McGuire that the 136 trips over the crossing remain accurate for the school year that begins in August 2010. Of the 136 trips, approximately two-thirds or 89 trips, have some students aboard. He further stated that the construction of the transportation center and the bus maintenance depot was completed in April 2009. There are no public bus routes that operate over the Higley Road crossing.

Hospitals

The nearest hospital and health facilities to the Higley Road crossing are as follows;

Hospitals:

- ✓ Gilbert Hospital – 5656 S Power Road
- ✓ Mercy Gilbert Medical Center – 3555 S. Val Vista Dr

Health Facilities

- ✓ Urgent Care Express – 920 E Williams Field
- ✓ East Valley Urgent Care – 641 W Warner Road

No data was available for the number of emergency vehicles utilizing this crossing.

Hazardous Materials

The Town gave the following response when asked about vehicles transporting hazardous materials through this crossing:

No data is available for the number of vehicles carrying hazardous materials at this location.

Zoning

Staff requested the Town provide information regarding the type of zoning in adjacent areas from the crossing. The following was the Town's response:

The area around this crossing is completely developed. The Town of Gilbert's Zoning Map shows the following: Single family residential to the north; public facility/institutional to the northeast; light industrial to the southwest; and shopping center to the southeast.

Spur Lines

The Town gave the following answer regarding spur lines in the area that were removed by the Railroad:

Based on a search of the UPRR website (www.uprr.com), the only data provided for a removal of a spur line in Arizona was the line between Benson and Bisbee which was opened in 1889 and was approved for abandonment in 1996. This is not within 10 miles of this crossing.

FHWA Guidelines Regarding Grade Separation

The Federal Highway Administration ("FHWA") Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met.

The nine criteria are applied to this crossing application as follows:

| | | Higley Road |
|--|---------------------------------------|------------------|
| The highway is a part of the designated Interstate Highway System | Crossing Currently meets the criteria | No |
| | Crossing meets the criteria by 2030 | No |
| The highway is otherwise designed to have full controlled access | 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 |
| AADT 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 | N/A ¹ |
| Vehicle delay exceeds 40 vehicle hours per day | Crossing Currently meets the criteria | No |
| | Crossing meets the criteria by 2030 | No |

¹ N/A = Not Applicable

Vehicular Delays at Crossings

Based on the current single track configuration, the Town gave the following response about delay time for vehicles at the crossing in this application. The delay time is measured from the point that the warning devices are activated at the crossing to the time the train has cleared the crossing and the warning devices are reset.

Based on 1 mile of train at 45 mph (45 mph is used in lieu of 60 mph to be conservative and more in line with an average train speed), 25 seconds of preemption time, and 15 seconds for the warning devices to reset, the average delay time per train is 1.9 minutes. At six trains per day, the average delay time is 11.9 minutes per day.

Based on a stopping time of 28 seconds and a time of 125 seconds to accelerate and to clear the track and 25 seconds of preemption time and 15 seconds for the warning devices to reset, the average delay time per train if a train stops on the track is 3.2 minutes. These times are based on one mile of train and charts from Railroad Engineering, Second Edition, John Wiley & Sons, Inc. 1982 (Figure 10.10 to estimate deceleration time and Figure 10.4 to estimate acceleration time to clear one mile of train).

Current delays fall well below the FHWA recommended threshold of 40 delay hours per day. Future delays also do not exceed 40 hours at this crossing. It is very likely that the road authority would consider some kind of roadway project to address the traffic delays before the level of delay got to this point.

Another commonly used measure outlined in the FHWA Guidelines; the so-called Crossing Exposure Index (which is simply the product of the number of trains per day multiplied by the number of vehicles crossing daily) is not currently met at this crossing. Based on future traffic projections submitted by the City, the Crossing Exposure Index will not be met in the year 2030. It should be noted that the criteria identified in the FHWA material are not mandates, but guidelines established by the Federal Highway Administration, which serve to alert those having jurisdiction that potential problems may arise.

Grade Separation

With regard to grade separating this crossing, the Town gave the following response:

With the proposed improvements to Higley Road, the location of the at-grade crossing remains unchanged. A grade separation would have the following consequences: 1) Impact to high voltage overhead power lines currently running parallel to the railroad. 2) Impact to underground utilities in Higley Road that cannot support 30 feet of additional embankment needed for a grade-separated crossing. Among these utilities is a critical 30-inch waterline which would be extremely difficult to shut down for relocation. 3) There is insufficient right-of-way to accommodate the 30 foot high embankment slopes along Higley Road; and 4) There is inadequate distance between the railroad and the existing Higley Road/Williams Field Road intersection to raise the roadway grade over the railroad without violating sight distance requirements. 5) The existing Higley Road/Vest Avenue intersection is 300 feet north of the railroad that would be removed entirely in order to accommodate a grade separated crossing; and 6) Local access would be severed at Fence Co, Roosevelt Water Conservation District headquarters, and Circle K.

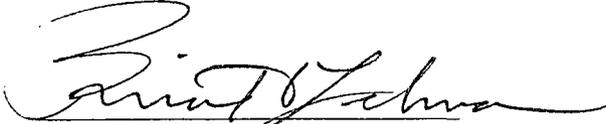
Staff has utilized the FHWA Guidelines to determine the potential need for grade separation at this crossing. Based on existing conditions, the crossing in this application meets none of the nine criteria for consideration of grade separation. Based on future projections by the City, none of the nine criteria will be met by 2030.

Crossing Closure

The area surrounding this crossing is highly developed with both commercial businesses and residential dwellings. To close this crossing would have a negative effect on many of the local businesses and limit access to residences. Therefore, Staff would not recommend closure of this crossing.

Staff Conclusions

Having reviewed all applicable data, Staff generally supports the Town's application. Staff believes that the upgrades are in the public interest and are reasonable. Staff believes that the measures proposed by the Town are consistent with other similar at-grade crossings in the State and will provide for the public's safety. Therefore, Staff recommends approval of the Town's application.



Brian H. Lehman
Railroad Safety Supervisor
Safety Division

Originator: BHL

COPIES of the foregoing mailed
this 23rd day of July, 2010 to:

Docket No. RR-03639A-10-0208

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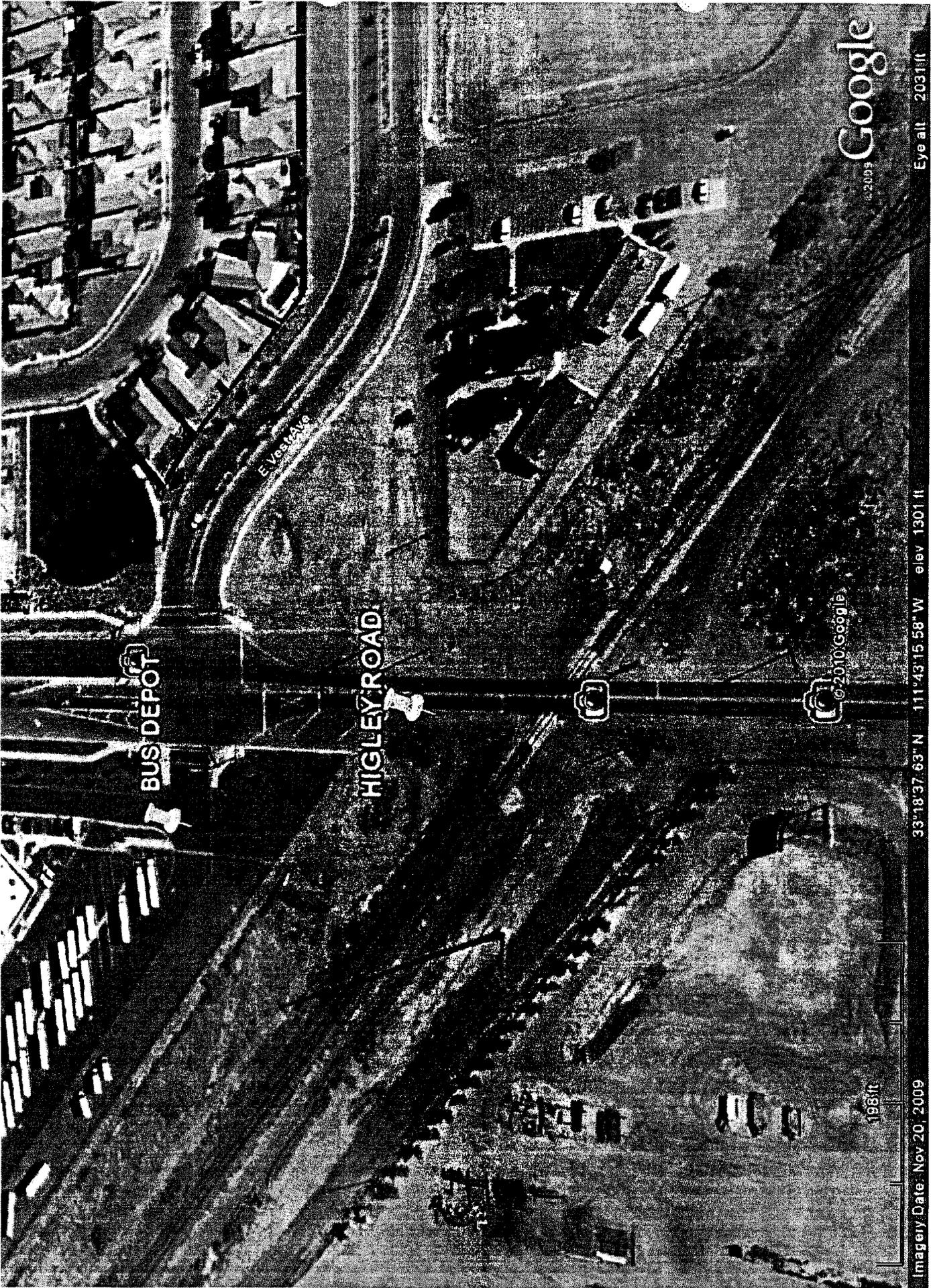
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Exhibit A



Google

Eye alt 2031ft

BUS DEPOT

HIGLEY ROAD

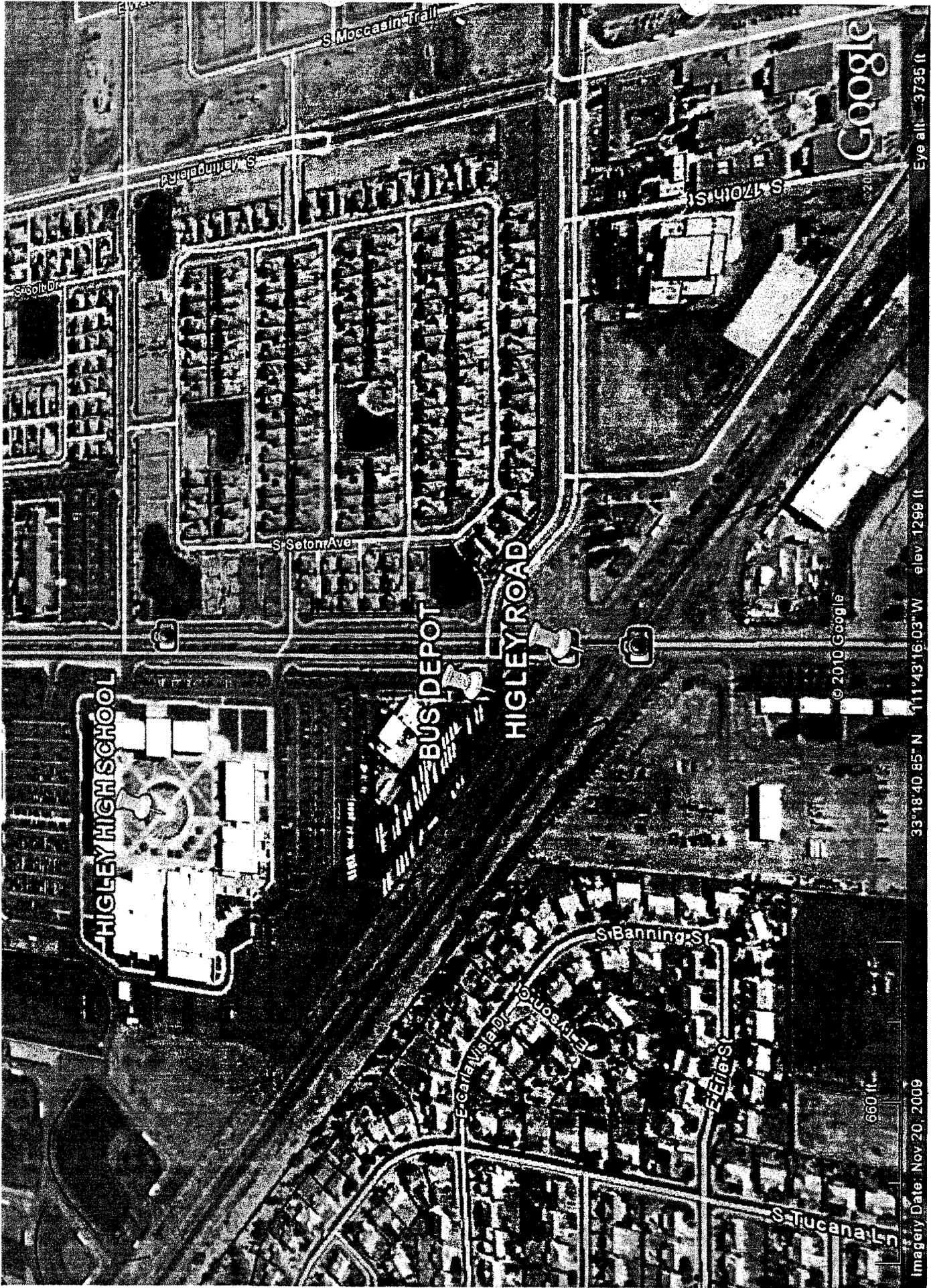
E. VESPAVE

33°18'37.63" N 111°43'15.58" W elev 1301 ft

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1986ft

Imagery Date: Nov 20, 2009



Google

Eye alt 3735 ft

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33°18'40.85" N 111°43'16.03" W elev. 1298 ft

Imagery Date: Nov 20, 2009

660 ft