



**Transcript Exhibit(s)**

**Docket #(s):** RR-02635 B-12-025 1

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**Exhibit #:** A1, A2, A3, B1, S1

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

Arizona Corporation Commission  
**DOCKETED**

OCT 10 2012

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*[Signature]* *[Signature]*

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To: Docket Control

Date: October 10, 2012

Re: Burlington Northern Santa Fe  
RR-02635B-12-0251  
Evidentiary Hearing  
09-27-2012

### **STATUS OF ORIGINAL EXHIBITS**

#### *FILED WITH DOCKET CONTROL*

#### City of Phoenix (A Exhibits)

- A-1 Admitted
- A-2 Admitted
- A-3 Administrative Notice

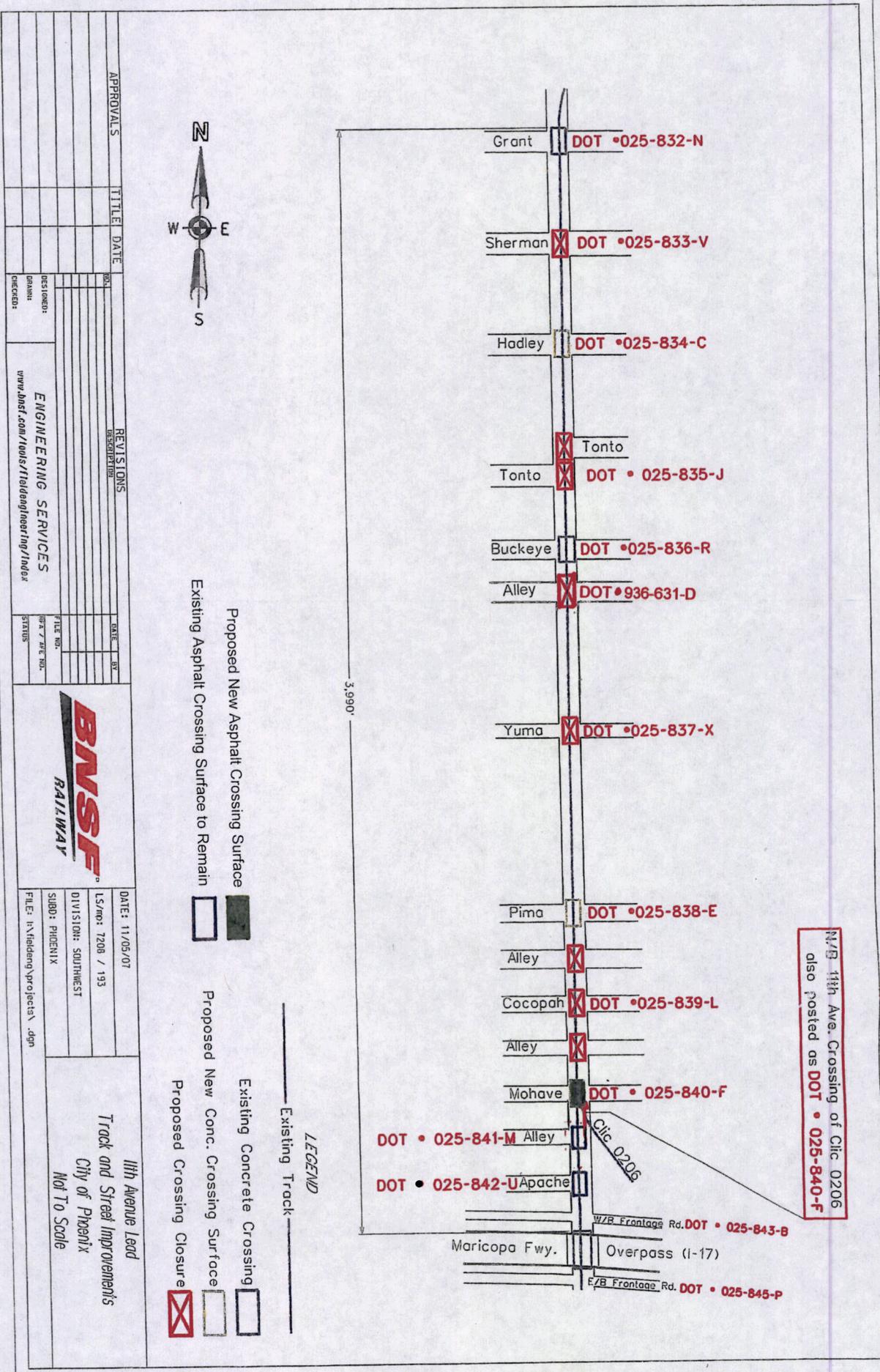
#### Burlington Northern (BN Exhibits)

- BN-1 Admitted

#### Staff (S Exhibits)

- S-1 Admitted

Copy to: Marc Stern, Administrative Law Judge  
Cynthia S. Campbell, Esq. – City of Phoenix  
Patrick Black, Esq. – BNSF Railway Co.  
Charles O. Hains, Esq. – ACC Staff



N/B 11th Ave. Crossing of Clic 0206  
also posted as DOT • 025-840-F

APPROVALS	TITLE	DATE	REVISIONS
DESIGNED BY:			
DRAWN BY:			
CHECKED BY:			
FILE NO.:			
DATE OF REV.:			
STATUS:			



DATE: 11/05/07  
 L.S./no: 7208 / 193  
 DIVISION: SOUTHWEST  
 SUBD: PHOENIX  
 FILE: i:\Fielding\projects\ .dgn

11th Avenue Lead  
 Track and Street Improvements  
 City of Phoenix  
 Not To Scale

# TRACK ALIGNMENT DIAGRAM

## EXHIBIT B

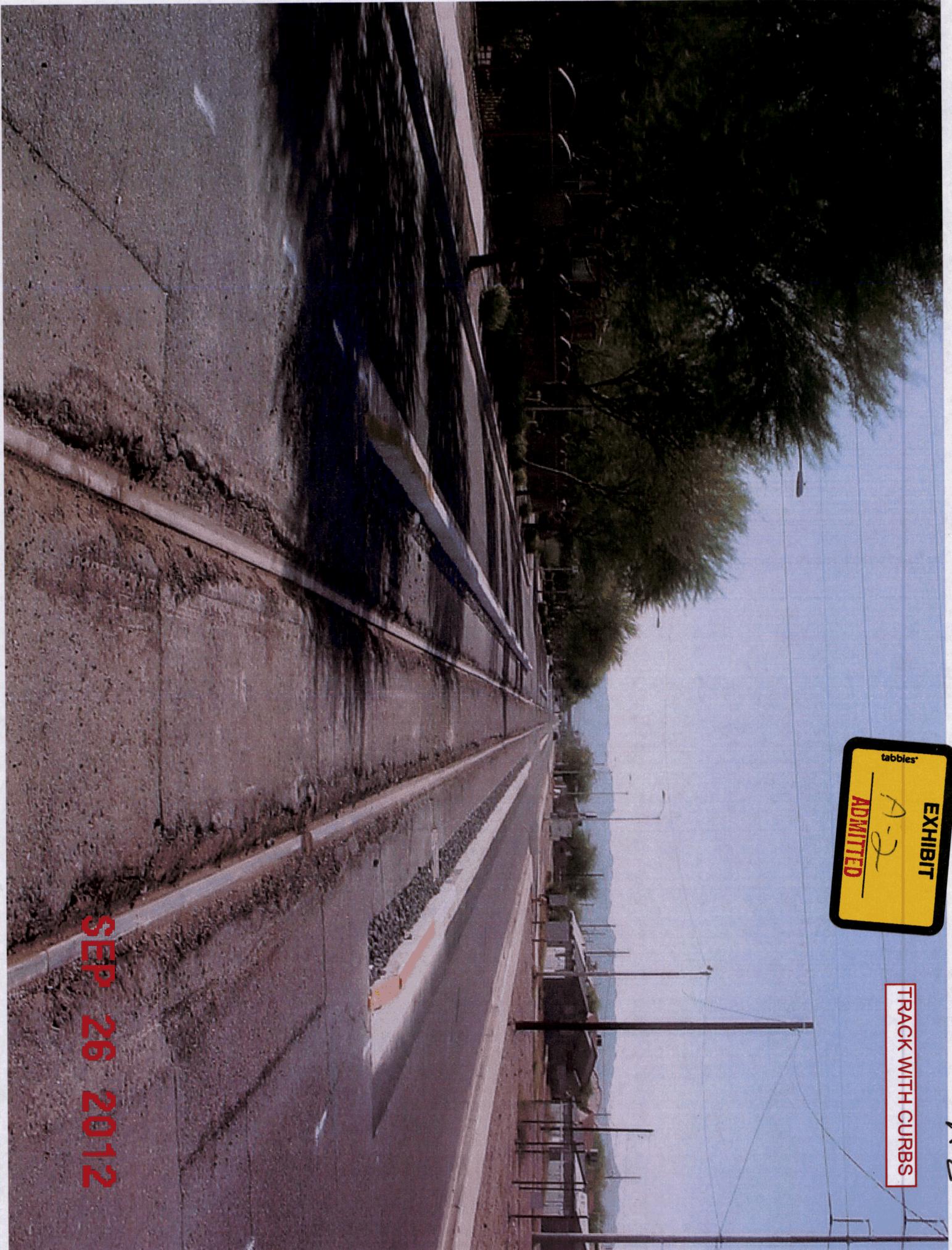
City 1



A-2

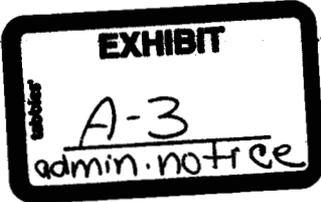


TRACK WITH CURBS



SEP 26 2012

**FOR YOUR REFERENCE:**  
Top page of exhibit only.



**DIRECT TESTIMONY OF  
BELINDA CUMMINGS  
ON BEHALF OF CITY OF PHOENIX  
JULY 16, 2012**

**Q. PLEASE STATE YOUR NAME, TITLE, BUSINESS ADDRESS AND TELEPHONE NUMBER.**

**A. My name is Belinda Cummings. I am a Civil Engineer II employed by the City of Phoenix, Street Transportation Department, Design and Construction Management. My business address is 1034 East Madison Street, Phoenix, Arizona 85034. My business telephone is (602) 534-7067.**

**Q. PLEASE DESCRIBE YOUR PRIMARY RESPONSIBILITIES FOR THE CITY OF PHOENIX.**

**A. My primary responsibility for the City of Phoenix is to manage the design of Capital Improvement projects. This involves working with design consultants, utility companies, other City Department, and the public. I am responsible for insuring that the design for the projects meets the City's standards.**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

**A. The purpose of my testimony is to describe the general condition of the area within the 11<sup>th</sup> Avenue I-17 to Grant Street Roadway Reconstruction Project ("project area"), its community uses and the use of the railroad track on 11<sup>th</sup> Avenue.**

**Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

**A. Yes. I have testified previously in support of Applications of the City of Phoenix to close railroad public grade crossings.**

BN-1



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2012 AUG 30 P 3:39

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 2 A Professional Corporation  
 3 Patrick J. Black (No. 017141)  
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 5 Suite 2600  
 6 Phoenix, Arizona 85012  
 7 Telephone (602) 916-5400  
 8  
 9 Attorneys for BNSF Railway Company

**BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE APPLICATION  
 10 OF THE CITY OF PHOENIX TO CLOSE  
 11 EIGHT PUBLIC AT-GRADE CROSSINGS  
 12 OF THE BURLINGTON NORTHERN &  
 13 SANTA FE RAILWAY ON 11TH  
 14 AVENUE BETWEEN APACHE STREET  
 15 AND GRANT STREET, IN THE CITY OF  
 16 PHOENIX, MARICOPA COUNTY,  
 17 ARIZONA, AT US DOT NUMBERS  
 18 928161M, 025839L, 928160F, 025837X,  
 19 936631D, 025835J WEST, 025835J EAST  
 20 AND 025833V.

DOCKET NO. RR-02635B- 12-0251  
**RESPONSE TO STAFF REPORT**

17 BNSF Railway Company (“BNSF”) hereby submits this Response to the Staff  
 18 Report dated August 16, 2012. The purpose of this Response is to clarify some of the  
 19 issues addressed in the Staff Report; in particular with respect to the City of Phoenix’s  
 20 (“City”) position regarding the crossings at issue.

21 1. Number of Crossings

22 Staff correctly notes that although the City’s application indicates there are eight  
 23 (8) crossings, there are only seven (7). It appears that the City split the Tonto Street  
 24 crossing, USDOT 025835J into two crossings without BNSF’s knowledge or Arizona  
 25 Corporation Commission (“Commission”) approval, as noted in the Staff Report “Closure  
 26 of Tonto Street East and West DOT# 025-835J”.

1           2.     Construction – Final Phase

2           The Staff Report states that sometime after the City’s contractor begins  
3 construction on the final phase of the project (the curb adjacent to the track), BNSF will  
4 “install the precast concrete track panels at the remaining open crossings and repave  
5 around the track switch at Mohave Street.” BNSF has not committed to this course of  
6 action, and the Grade Crossing Construction and Maintenance Agreement (“Agreement”)  
7 has not yet been finalized. By way of background, BNSF sent an initial draft of the  
8 Agreement to the City in February, 2010. The City provided an initial response in May  
9 2010, and then again in September 2010. However, BNSF received the City’s most recent  
10 proposed modifications at the beginning of August, 2012, which is *after* the application  
11 was filed with the Commission.<sup>1</sup>

12           Additionally, BNSF is concerned with the process the City has taken in  
13 constructing the existing curbs along 11<sup>th</sup> Avenue. While BNSF does not object to the  
14 clearance (13 feet) created, the company understands that such design must first be  
15 approved by the Commission before construction according to A.A.C. R14-5-110(B)(5).  
16 BNSF requests that the Commission give clear direction in this proceeding whether  
17 clearance issues for track occupying or adjacent to roadways must first be determined by  
18 the Commission, or whether a road authority can make the determination itself.

19           3.     Crossings to Remain Open

20           The Staff Report indicates that public crossings at Grant Street, Hadley Street,  
21 Buckeye Road, Pima Street and Mohave Street shall remain open, and are equipped with  
22 flashing lights, automatic gates and bells. As clarification, the crossings at Grant Street  
23 and Buckeye Road are equipped with cantilevered flashing lights. In addition, the City

24           \_\_\_\_\_

25           <sup>1</sup> Attached to the City’s direct testimony (filed July 17, 2012) as Exhibit F is a draft copy of the Agreement, which is  
26 a version that contains all of the City’s proposed modifications. It is not an accurate representation of the original  
document provided by BNSF, nor does it resemble a version that BNSF will agree to. As such, BNSF strongly  
objects to the introduction of this document as evidence in the proceeding.

1 has requested that BNSF widen Grant Street, Hadley Street, Buckeye Road, Pima Street,  
2 and Mohave Street anywhere from 64 ft to 107 ft at each of these crossings, which will  
3 also modify the signal system by relocating the approach circuits. However, the City has  
4 not yet filed an application with the Commission to modify these public crossings.  
5 Because this phase of the project will be addressed in the proposed Agreement, the City  
6 might want to consider either filing a separate application for these crossing  
7 modifications, or amending its application in this proceeding in order to obtain the  
8 necessary Commission authority to widen the crossings at issue.  
9

10 **CONCLUSION**

11 BNSF submits this Response in order to ensure that all parties are fully informed of  
12 the company's position before the evidentiary hearing. While BNSF does support closing  
13 the seven (7) crossings at issue, BNSF also wants to ensure that – as the respondent in this  
14 proceeding – matters are addressed pursuant to the Commission's rules and regulations.  
15 In addition, the City made representations about BNSF and the project as a whole that  
16 required a response in order to clarify any outstanding issues that may exist. Finally,  
17 while hopeful it can work with the City over the next few months, BNSF cannot speculate  
18 as to when the Agreement will be finalized based on the history of this project.  
19

20 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of August, 2012.

21 FENNEMORE CRAIG, P.C.

22   
23 By: \_\_\_\_\_  
24 Patrick J. Black  
25 Attorneys for BNSF Railway Company  
26

1 ORIGINAL and 13 copies filed  
2 this 30<sup>th</sup> day of August, 2012 with:

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

7 COPY hand-delivered/mailed  
8 this 30<sup>th</sup> day of August, 2012 to:

9 Steve Olea, Interim Director  
10 Safety Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

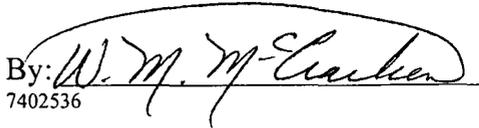
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15 Legal Division  
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19 Brian Lehman, Railroad Supervisor  
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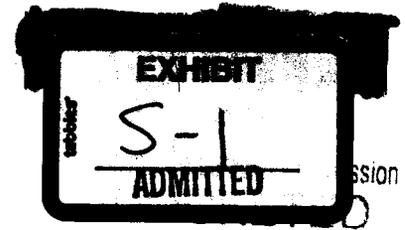
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Belinda Cummings, Project Manager  
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Street Transportation – DCM  
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25 By:   
26 7402536

ORIGINAL

Staff Memorandum  
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To: THE COMMISSION

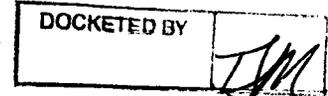
2012 AUG 16 A 8:3

From: Steve M. Olea  
Interim Director  
Safety Division

AZ CORP COMMISSION  
DOCKET CONTROL

AUG 16 2012

Date: August 16, 2012



RE: IN THE MATTER OF THE APPLICATION OF THE CITY OF PHOENIX TO CLOSE EIGHT PUBLIC AT- GRADE CROSSINGS OF THE BURLINGTON NORTHERN SANTA FE RAILWAY ON 11TH AVENUE BETWEEN APACHE STREET AND GRANT STREET, IN THE CITY OF PHOENIX, MARICOPA COUNTY, ARIZONA, AT US DOT NUMBERS 928161M, 025839L, 928160F, 025837X, 936631D, 025835J WEST, 025835J EAST AND 025833V.

DOCKET NO. RR-02635B-12-0251

**Background**

On June 13, 2012, the City of Phoenix ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern Santa Fe Railway Co. ("BNSF") to close eight public at-grade crossings<sup>1</sup> of the BNSF's tracks on 11th Avenue between Apache Street and Grant Street, in Phoenix, Arizona at USDOT NO'S. 928161M, 025839L, 928160F, 025837X, 936631D, 025835J West, 025835J East and 025833V.

**Geographical Information**

The eight crossings are located on BNSF's 11th Avenue Lead, a spur line, between the Interstate 17 ("I-17") overpass and Grant Street. The spur line is located in the center of 11th Avenue and runs lengthwise down 11th Avenue adjacent to the west side of the Matthew Henson Community ("Matthew Henson"). Matthew Henson was opened in 1941 on the northwest corner of 7th Avenue and Buckeye Road. Matthew Henson was the State's first public housing unit. The original red brick units were constructed with all the modern conveniences of the era and were a model for other public housing units west of the Mississippi River. As the development aged, the City pursued measures to revitalize the community. In 2001, the City received a \$35 million Homeownership Opportunities for People Everywhere grant from the U.S. Department of Housing and Urban Development to demolish and rebuild Matthew Henson. The

<sup>1</sup> Although the application indicates that there are eight crossings, based on Staff's investigation there is a single United States Department of Transportation crossing number for Tonto Street which the application identifies as two separate crossings.

community has been rebuilt to market rate standards to attract a wide variety of residents. It provides amenities to residents which include open space, swimming pools, barbecue areas and a community center. All four rental phases of the project have been completed, and Matthew Henson maintains a high occupancy rate. To further efforts to revitalize the area surrounding the community, residents proposed that BNSF and the City close certain public at grade crossings and implement streetscape improvements as part of the 11th Avenue Reconstruction Project. The proposed improvements and closings will increase safety, improve property values and generally beautify the neighborhood. (See Exhibit's "A" and "B").

### **11th Avenue Reconstruction Project**

The initial phase of the 11<sup>th</sup> Avenue Reconstruction Project will consist of installing street lights, widening the curb returns at the crossings that remain open to accommodate truck traffic, constructing ramps in compliance with the Americans with Disabilities Act ("ADA") at all corners, constructing in-fill sidewalks and installing storm drains. City crews also revised the garbage pick-up to be done on the street instead of the alleys. Total cost of this phase is \$1,620,542. This phase began in October, 2011 and was completed in January, 2012.

The next phase of construction is to construct curbs on the east and west side of the track rails 6 feet 6 inches from the center of the track to the face of the curbs between Mohave and Grant streets, allowing BNSF 13 feet of clearance between curbs. This phase started construction on June 18, 2012, and was completed on July 18, 2012. This phase will only construct the curb without closing any alleys or public at-grade crossings.

The final phase of construction will consist of constructing the curb that closes the three alleys and four street crossings along with milling and an overlay of asphalt from Grant Street to the I-17. The final phase will not begin until a Commission Order has been issued approving the crossing closures. Sometime after the City's contractor begins construction of the curb adjacent to the track, BNSF will install the precast concrete track panels at the remaining open crossings and repave around the track switch at Mohave Street. Of the crossings that will remain open; Grant Street, Hadley Street, Buckeye Road, Pima Street and Mohave Street are all equipped with flashing lights, automatic gates and bells. Apache Street and the lone alley to remain open are equipped with railroad warning signs. There are no further warning device improvements planned at this time.

The total cost to the City for the first phase is \$1,620,542 with the second phase costing \$2,455,018. For the entire project, the total cost to the City is \$4,075,560. Total cost for BNSF's portion is \$187,280 making a grand total of \$4,262,840 for the project. The City and BNSF are still negotiating the terms and conditions of the Grade Crossing Construction and Maintenance Agreement. Based on discussions with representatives of the City, Staff anticipates the agreement to be executed before the Commission issues its final Decision on this Application.

### **Public Comment Hearings**

The City provided the following information and dates of public Open Meetings and Open Houses:

*Phoenix has conducted open meetings on the following dates:*

- *June 14, 2006*
- *September 15, 2006*
- *October 3, 2006*
- *September 30, 2009*

*Phoenix invited the public and conducted the following open houses:*

- *April 12, 2011 (open house invitations delivered)*
- *April 27, 2011 (open house)*
- *September 16, 2011 (open house invitations delivered)*
- *October 4, 2011 (open house)*
- *October 14, 2011 (construction notices delivered)*
- *April 20, 2012, (construction update notices delivered)*
- *May 10, 2012 (Community Action Team Meeting Project Update)*
- *May 25, 2012 (open house and construction updated notices delivered)*
- *June 5, 2012 (open house)*

According to the City's staff, the open meetings and open houses were successful. Public comment suggests that the community supports the crossing closures and is grateful for the improvements to 11th Avenue.

### **Proposed Closures**

Per the City:

*The following crossings need to be closed primarily to improve traffic control in the neighborhood and for safety reasons. By minimizing the locations where vehicles can cross the tracks, traffic control is improved. Precast concrete track panels will be installed at the remaining open crossings, and there will no longer be a problem with heaving asphalt. BNSF will no longer need to maintain the asphalt between the rails and on either side of the rails at the remaining vehicle crossings. Phoenix will be able to do maintenance of the asphalt without interfering with the tracks at the vehicle crossings.*

### **Closure of Alley DOT# 928-161-M**

The alley is a paved single lane east/west roadway used primarily by utility companies and City vehicles. This is a passive crossing consisting of cross bucks. Per the City, the Average Daily Traffic ("ADT") for this alley is 10 vehicles per day

("vpd"), 5 eastbound and 5 westbound with a Level of Service of ("LOS") A. No future traffic projections were provided.<sup>2</sup>

The City gave no posted speed for the alley. The Safety Division's, Railroad Safety Section ("Staff"), and the Federal Railroad Administration ("FRA") accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Mohave Street is 142 feet to the south, and Pima Street is 461 feet to the north.

#### **Closure of Cocopah DOT# 025-839-L**

Cocopah is a paved two lane east/west roadway. Crossing protection includes: LED lights, automatic gates and bells which will be removed after the closure. Per the City, the ADT for Cocopah is 533 vpd eastbound and 436 vpd westbound with a LOS of A. No future traffic projections were provided. The posted speed for Cocopah is 25 mph. Staff and FRA accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Mohave Street is 294 feet to the south and Pima Street is 283 feet to the north.

#### **Closure of Alley DOT# 928-160-F**

This alley is a paved single lane east/west roadway used mostly by utility companies and City vehicles. The alley is a passive crossing with cross bucks for protection. Per the City, the ADT for this alley is 21 vpd eastbound and no vehicles per day westbound with a LOS of A. No future traffic projections were provided. The City gave no posted speed for the alley. Staff and FRA accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Mohave Street is 470 feet to the south and Pima Street is 130 feet to the north.

#### **Closure of Yuma Street DOT# 025-837-X**

Yuma Street is a paved two lane east/west roadway. It is a passive crossing protected by railroad advanced warning signs and stop signs. Per the City, the ADT for Yuma Street is 139 vpd eastbound and 121 vpd westbound with a LOS of A. No future traffic projections were provided. The posted speed is 25 MPH. Staff and FRA accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Pima Street is 630 feet to the south and Buckeye Road is 613 feet to the north.

---

<sup>2</sup> **Note:** 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.

**Closure of Alley DOT# 936-631-D**

This alley is a paved single lane east/west roadway mostly used by utility companies and City vehicles. The alley is a passive crossing with cross bucks for protection. Per the City, the ADT is no vpd eastbound and 9 vpd westbound with a LOS of A. No future traffic projections were provided. The City gave no posted speed for this alley. Staff and FRA accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Pima Street is 1,115 feet to the south and Buckeye Road is 136 feet to the north.

**Closure of Tonto Street East and West DOT# 025-835-J**

Tonto Street is a paved east/west two lane roadway that jogs north to south when traveling westbound as it crosses 11th Avenue. After the completion of the Matthew Henson Development, Tonto Street became offset rather than a direct east/west street. The crossing is protected with advanced warning signs and a stop sign for vehicles traveling eastbound. Railroad advanced warning signs are installed for westbound traffic. Per the City, the ADT is 203 vpd eastbound and 281 vpd westbound with a LOS of A. No future traffic projections were provided. The posted speed limit is 25 mph. Staff and FRA accident/incident records indicate no incidents at this location. The City's application implies that Tonto Street may be two separate crossings with the same Department of Transportation number ("DOT"), however Staff and FRA records indicates that this is only one crossing, given only one DOT number. Alternative routes from this crossing are as follows: Buckeye Road is 456 feet to the south and Hadley Street is 338 feet to the north.

**Closure of Sherman DOT# 025-833-V**

Sherman Street is a paved east/west two lane roadway protected by advance railroad warning signs. Per the City, the ADT for Sherman is 139 vpd eastbound and 378 vpd westbound with a LOS A. No future traffic projections were provided. The posted speed limit is 25 MPH. Staff and FRA accident/incident records indicate no incidents at this location. Alternative routes from this crossing are as follows: Hadley Street is 343 feet to the south and Grant Street is 323 feet to the north.

The following data regarding the number of trains, schools, hospitals, zoning information and hazardous materials are the same for all eight crossings.

**Train Data**

Data provided by the City regarding train movements through all eight crossings are as follows:

Train Count: Average of 2 trains per day

Train Speed: 10 mph

Thru Freight/Switching Moves: Thru freight only, with some switching at the Phoenix Brick Industry, by Mohave Street.

### **Schools and Bus Routes**

The following are schools located within two miles of the crossings proposed to be closed:

- Paul Laurence Dunbar Elementary School, 707 W. Grant St.
- Mary McLeod Bethune Elementary School, 1310 S. 15<sup>th</sup> Ave.
- Phoenix Police and Fire High School, 1645 W. McDowell Rd.

According to Phoenix Elementary School District Transportation staff, there is one special education bus that travels through the project area twice a day.

### **Hospitals**

According to the City these are the nearest hospitals to the proposed closures:

- Banner Good Samaritan Medical Center –approximately 4 miles away.
- St. Lukes Medical Center – approximately 4 miles away.
- St. Joseph Hospital – approximately 4 miles away.

The City gave the following response about emergency vehicle use:

*According to Phoenix's Roadway Classification Map, the crossings to be closed are local streets. They are two lane roads. Buckeye Road is the only road within the project area which routinely would be used for emergency vehicles, as it is classified as an arterial roadway. There is no proposal to close the crossing at Buckeye Road.*

### **Zoning**

Per the City of Phoenix:

*According to Phoenix' current Zoning Map, the zoning in the project area is primarily residential. At this time, there are no new developments planned in the vicinity of the project area.*

### **Hazardous Materials**

The City gave the following response when asked about vehicles transporting hazardous materials through these crossings:

*Neither 11th Avenue nor any of the crossings proposed for closure are registered in the National Hazardous Material Route Registry. However, based on information from the Arizona Department of Transportation, there are no restrictions on vehicles transporting hazardous materials on these roadways. Phoenix is unable to provide specific traffic counts for vehicles transporting hazardous materials on these roadways.*

**Staff Conclusions**

The final phase of the 11th Avenue Reconstruction Project is to improve the roadway surface of 11th Avenue and close redundant rail crossings. The closing of the crossings in the City's application will improve traffic control and with the installation of curbs, provide a safer roadway for the traveling public. With the closures, the traveling public will not be inconvenienced; given there will be an open crossing on average, every 600 feet along the 3,990 feet of the track alignment. Staff believes the closures are appropriate. Having reviewed all applicable data, Staff supports the City's application to close the seven at-grade crossings along 11th Avenue. Staff believes that the crossing closures are in the public interest and are reasonable. Therefore, Staff recommends approval of the City's application.



**Brian H. Lehman**  
Railroad Supervisor  
Safety Division

**COPIES of the foregoing mailed  
This 16th day of August, 2012 to:**

**Docket No. RR-02635B-12-0251**

**Melvin Thomas  
Manager of Public Projects  
BNSF  
740 E. Carnegie drive  
San Bernardino, CA 92408-3571**

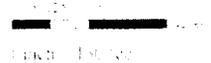
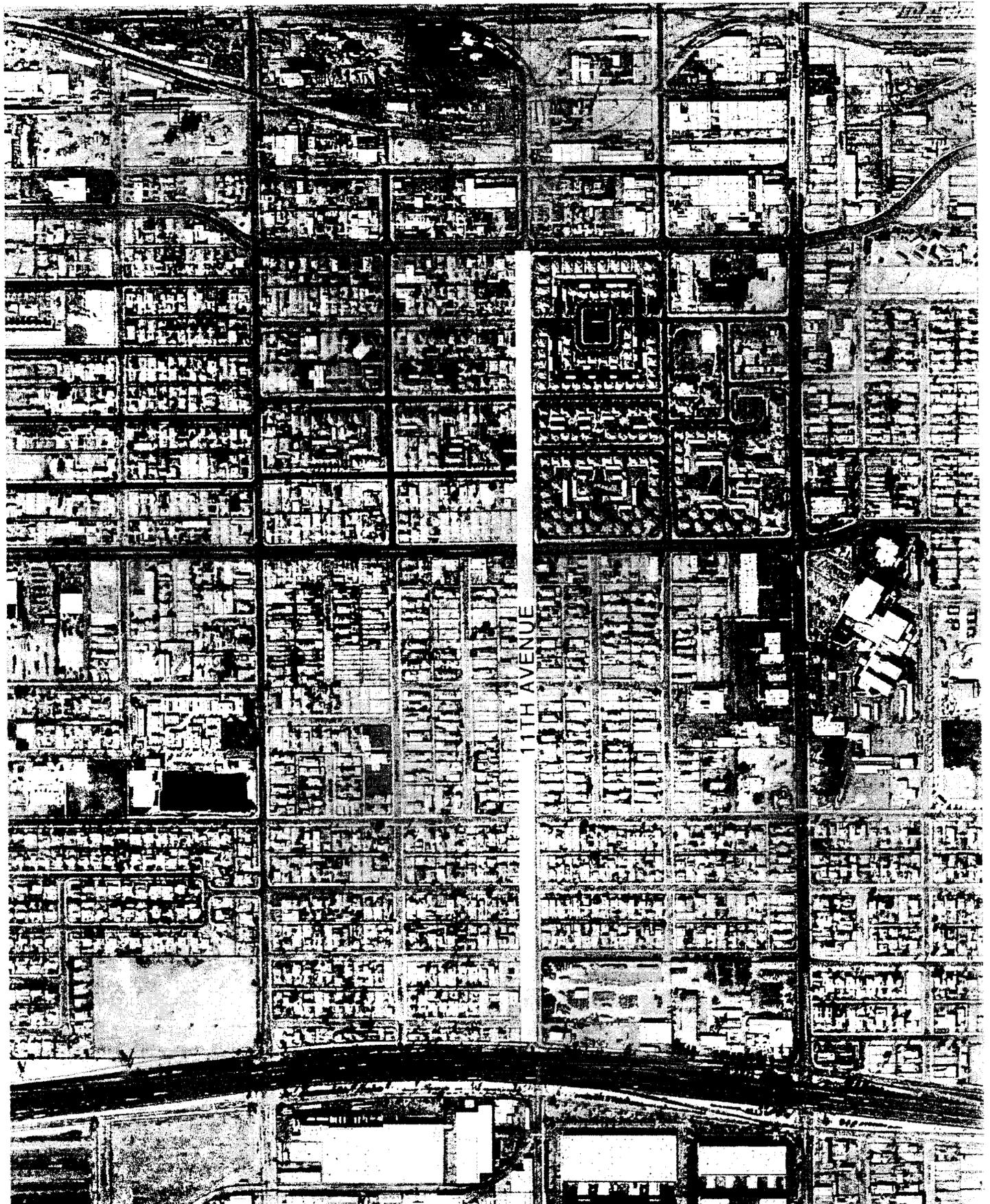
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**Cynthia S. Campbell  
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**Belinda Cummings  
Project Manager  
City of Phoenix  
Street Transportation – DCM  
1034 E. Madison St.  
Phx. AZ, 85034**

# Exhibit "A"

AERIAL MAP



Grant Ave to 17  
Between 13th ave and 9th ave

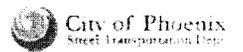


EXHIBIT A

# Exhibit "B"

