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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

5 CYNTHIA S. CAMPBELL, State Bar No. 016874
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Email: cynthia.campbell@phoenix.gov

7 Attorneys for Applicant City of Phoenix

8 BEFORE THE ARIZONA CORPORATION COMMISSION

9 COMMISSIONERS:

10 GARY PIERCE, Chairman
11 SANDRA D. KENNEDY
12 PAUL NEWMAN
13 BOB STUMP
BRENDA BURNS

Arizona Corporation Commission
DOCKETED

DEC 06 2012

DOCKETED BY

OFFICE OF THE CITY ATTORNEY
GARY VERBURG, City Attorney
200 W. WASHINGTON, SUITE 1300
PHOENIX, ARIZONA 85003-1611

14 IN THE MATTER OF THE APPLICATION
OF THE CITY OF PHOENIX TO CLOSE
EIGHT PUBLIC GRADE CROSSINGS ON
15 11TH AVENUE BETWEEN APACHE
STREET AND GRANT STREET, IN THE
16 CITY OF PHOENIX, MARICOPA COUNTY,
ARIZONA, AT DOT NUMBERS 928161M,
17 025839L, 928160F, 025837X, 936631D,
025835J WEST, 025835J EAST, 025833V

DOCKET NO. RR-02635B-12-0251

**NOTICE OF FILING CROSSING
CLOSURE AGREEMENT**

19 The City of Phoenix (Phoenix), through its City Attorney, Gary Verburg, by his
20 Assistant, Cynthia S. Campbell, hereby files the Crossing Closure Agreement (“Agreement”)
21 executed by representatives of Phoenix and Burlington Northern Santa Fe (“BNSF”)
22 Railroad. The Agreement confirms the agreement of Phoenix and BNSF to close those street

1 crossings identified in the Application in this matter, as well an understanding of the parties
2 to complete the improvements on 11th Avenue.

3 RESPECTFULLY SUBMITTED this 6th day of December, 2012.

4 GARY VERBURG, City Attorney

5
6 By 
7 CYNTHIA S. CAMPBELL
8 Assistant City Attorney
9 200 W. Washington, Suite 1300
10 Phoenix, Arizona 85003-1611

10 Original and 13 Copies of the
11 foregoing hand delivered this
12 6th day of December, 2012 to:

12 Docket Control
13 Arizona Corporation Commission
14 1200 W. Washington
15 Phoenix, AZ 85007

16 Administrative Law Judge
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, Arizona 85007

20 Copies of the foregoing mailed
21 this 6th day of December, 2012, to:

22 Brian Lehman
Railroad Safety Supervisor
Arizona Corporation Commission
Railroad Safety Section
2200 N. Central Ave., Suite #300
Phoenix, AZ 85004

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1 Janice Alward
Chief Legal Counsel
2 Legal Division
Arizona Corporation Commission
3 1200 W. Washington Street
Phoenix, Arizona 85007

4
Melvin Thomas
5 Manager, Public Projects
BNSF Railway
6 740 East Carnegie Drive
San Bernardino, California 92408

7
Patrick J. Black
8 Fennemore Craig, P.C.
3003 North Central Avenue
9 Suite 2600
Phoenix, Arizona 85012-2913

10
11 By 
CSC/kb:1015308v1

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CROSSING CLOSURE AGREEMENT

BF 10003735
Sherman Street, US DOT# 025833V
Tonto Street, US DOT# 025935J
Alley, US DOT# 933631D
Yuma Street, US DOT# 025837X
Alley, USDOT# 928160F
Cocopah Street, US DOT# 025839L
Alley, US DOT# 928161M
11th Ave Lead
Phoenix Subdivision
Railroad Line Segment 7620
Railroad Milepost 193.39-194.82
Phoenix, AZ

CROSSING CLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") made and entered by and between the BNSF RAILWAY COMPANY, hereinafter referred to as the "Railroad", and the CITY OF PHOENIX, ARIZONA hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, in the interest of aiding vehicular travel and public safety, City is undertaking a project known as the Hope VI Project to improve the existing 11th Avenue, located at BNSF Line Segment 7620 and Milepost 193.3 to Milepost 194.0, and designated by cross-streets D.O.T. Nos. 025832N (Grant Street), 025833V (Sherman Street), 025834C (Hadley Street), 025835J (Tonto Street), 025836R (Buckeye Road), 936631D (alley), 025837X (Yuma Street), 025838E (Pima Street), 928160F (alley), 025839L (Cocopah Street), 928161M (alley), and 025840F (Mohave Street), by constructing curb adjacent to and parallel to the existing BNSF track within the existing roadway as indicated on EXHIBIT A, attached hereto and incorporated herein (collectively the "Project" as further defined); and

WHEREAS, the Railroad will cooperate with the City's efforts to gain approval from the Arizona Corporation Commission ("ACC") to close the Sherman Street, US DOT# 025833V, Tonto Street, US DOT# 025935J, Alley, US DOT# 933631D, Yuma Street, US DOT# 025837X, Alley, USDOT# 928160F, Cocopah Street, US DOT# 025839L, and Alley, US DOT# 928161M grade crossings ("Crossings"); and

WHEREAS, the City will perform the necessary street closure work at the Crossings;

WHEREAS, the Railroad will perform the necessary removal work of the railroad crossing surfaces and warning devices associated with the Crossings; and

WHEREAS, the City will be required to file a new application with the ACC if at any time in the future the City desires to reestablish future crossings of the tracks at any of all of the Crossings.

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

AGREEMENT

SECTION 1: The City after receiving approval from the ACC and after having executed this Agreement, shall take all actions necessary to close and vacate the Sherman Street, US DOT# 025833V, Tonto Street, US DOT# 025935J, Alley, US DOT# 933631D, Yuma Street, US DOT# 025837X, Alley, USDOT# 928160F, Cocopah Street, US DOT# 025839L, and Alley, US DOT# 928161M public crossings across the Railroad. City shall design and install curb adjacent and parallel to the Railroad's track within its street right of way and install the appropriate end-of-road treatment at each location. The City shall contact BNSF Roadmaster Marc Ramirez at office # 623-463-4103 or email at Marc.Ramirez@BNSF.com in advance of installing the curbs adjacent and parallel to the Railroad's track at the Crossings to coordinate scheduling of work next to the track. Phoenix will pay BNSF for actual costs to provide any necessary flagging for the construction of the curb work needed to close the Crossings.

SECTION 2: Upon approval from the ACC, the Railroad agrees to remove the railroad crossbuck signs, and crossing signals that currently exist at the Crossings.

SECTION 3: The City agrees to own and maintain its end-of-road treatment. The City will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 11th Ave roadway from the back of curb at the tracks to the face of curb at the sidewalk.

SECTION 4: BNSF will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 11th Avenue track between the back of the track curb east of the tracks, to the back of the track curb west of the tracks. BNSF will be responsible for all costs of replacing any of the City's curb that is damaged while performing their track repairs, maintenance, and future construction or reconstruction activities in the area between the tracks, unless otherwise negotiated as part of an agency project.

SECTION 5: BNSF agrees that it will install and maintain concrete panel crossing surfaces at existing roadway width at two of the crossings to remain open across 11th Avenue, namely the at-grade crossings at Hadley and Pima Streets. The City and BNSF will enter into a Construction and Maintenance Agreement that incorporates the terms of this Section, as well as additional terms to detail the procedures for the construction and maintenance responsibilities of each party to this Agreement along 11th Avenue.

SECTION 6: The City agrees, by the above consideration received that it intends that the Crossings remain closed indefinitely. However, in the event the City chooses to re-establish

any one of the Crossings in the future, the City shall reimburse BNSF for the cost of (i) removing the railroad warning devices at the Crossings, (ii) surface improvements made pursuant to the Construction and Maintenance Agreement between BNSF and the City at the remaining open crossings located at Hadley Street, Pima Street and Mohave Street, and (iii) material and labor to re-establish any of the Crossings.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as the dates below indicated.

EXECUTED by the Railroad this 20th day of November, 2012

BNSF RAILWAY COMPANY

By: 

Printed Name: Melvin Thomas

Title: Manager Public Projects

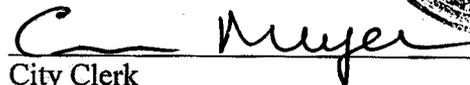
EXECUTED by the City this 21st day of November, 2012

**CITY OF PHOENIX,
an Arizona municipal corporation,**

By: 
Printed Name: Wylie Bearup
Title: Street Transp. Director / City Engineer

Attest:




City Clerk

Approved as to form:


ACTING City Attorney CSC