



Intermodal Transportation

NEW APPLICATION



0000168056

Dallas Hammit, State Engineer
Steve Boschen, Division Director

ORIGINAL RECEIVED

January 5, 2016

2016 JAN 13 A 11: 34

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

AZ CORP COMMISSION
DOCKET CONTROL

RE: Application to upgrade existing railroad signals
Project: Alma School Road
Federal Project # MES-0(203)A
ADOT Tracs # 0000 MA MES SR231 01C
Union Pacific Railroad Crossing AAR/DOT # 741-650B

Arizona Corporation Commission
DOCKETED

JAN 13 2016

DOCKETED BY 

Mr. Watson,

RR-03639A-16-0007

This application is being submitted to allow the Union Pacific Railroad (UPRR) to install two gate/flasher units and a cantilever for southbound traffic and to install two gate/flasher units and a cantilever for northbound traffic on Alma School Road in the City of Mesa.

1. Project Location and Description

The project is located on Alma School Road between Broadway Road and Main Street in Mesa. Alma School Road is 6 lanes wide and is normally used for 2-way traffic, consisting of 3 northbound and 3 southbound lanes.

The project consists of the UPRR installing upgraded gate/flasher units on both the outside edges of the road and within rebuilt raised medians. Two new cantilevers will be installed for south and northbound traffic, and additional concrete crossing panels on the outside edges of the road for new sidewalk. The City of Mesa will also construct civil improvements including new raised medians, sidewalk adjustments, and road approach improvements to accommodate the railroad signal and surface improvements.

2. Why the crossing is needed

Based on the 2008 crossing improvement array, this crossing was selected for upgrades to the signals.

3. Construction Phasing

Once the utility, environmental, and right-of-way clearances are obtained, ADOT can apply for and receive FHWA construction authorization and authorize UPRR to order their signal materials, build the crossing surface and authorize City of Mesa to construct their civil improvements. Once an Opinion and Order is issued, UPRR will modify the signal equipment. The railroad signal improvements will be installed by UPRR within 15 months of the receipt of an Opinion and Order from the ACC.

4. Maintenance of the crossing

UPRR will be responsible for installing and maintaining the crossing surface and signal equipment. City of Mesa will be responsible for maintaining the road approaches outside of UPRR responsibility.

5. Project Funding

100% of the signal work and 94.3% of surface work funding will be provided thru the Federal Highway Administration thru their Section 130/highway-railroad crossing safety improvement program. The road authority is responsible for a 5.7% contribution to surface work including track panels, sidewalks, etc.

Estimated costs are as follows:

UPRR Furnish and Install Flashers/Gates and Cantilevers	\$478,000.00
UPRR Furnish and Install Concrete Crossing Panels	\$113,000.00
City of Mesa Construction of Civil Improvements	\$151,000.00
5.7% contribution to surface work by road authority	<u>\$ 7,000.00</u>
Total	\$749,000.00

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

1. Provide Average Daily Traffic Counts for each of the locations.
The Average Daily Traffic Count for this crossing was 30,500 ADT in 2014 per the City of Mesa.
2. Please describe the current Level of Service (LOS) at each intersection.
No LOS has been established.
3. Provide any traffic studies done by the road authorities for each area.
The City of Mesa does not have any traffic studies for this area but did provide the following for the period from 1/1/02 to 11/30/09.

A total of 12 crashes were reported on or near the rail crossing on Alma School. 5 were rear-enders (none of the reports indicated that the crossing was active at the time the accidents occurred), 5 involved single vehicles striking or being struck by the crossing arm, 1 was a vehicle-train collision (6/30/06), and 1 involved a left-turning driver.

4. Provide the population of the City the crossing is located in.
2010 census: 439,041 persons.
5. Provide what warning devices are currently installed at the crossing.
Currently at this crossing there are flashing lights and gates on the outside edges of the roadway and flashing lights installed in raised medians for both traffic directions along Alma School Road. The crossing is equipped with Constant Warning Time devices.
6. Provide distances in miles to the next public crossing on either side of the proposed project location. Are any of these grade separations?
Dobson Road (DOT 741-649G) is at-grade and 1 mile west. Extension Road (DOT 741-651H) is at-grade and 1/2 mile to the east. Country Club Drive (DOT 741-652P) is grade-separated and 1 mile to the east.
7. How and why was grade separation not decided on at this time? Please provide any studies that were done to support these answers.
Grade separation was not considered as part of this Section 130 safety upgrade because the crossing does not meet any of the criteria outlined in the FHWA-Grade Separation Guidelines.
8. If this crossing was grade separated, provide a cost estimate of the project.
Estimate \$30,000,000++ due to urbanized location.
9. Please describe what the surrounding areas are zoned for near this intersection. i.e. Are there going to be new housing developments, industrial parks etc.
The properties around this crossing are zoned as General Industrial, Limited Commercial, Public & Semi Public and Residential Multiple Dwelling.
10. Please supply the following: number of daily train movements through the crossing, speed of the trains, and the type of movements being made (i.e. thru freight or switching). Is this a passenger train route?
Per the Federal Railroad Administration website this crossing has 5 day thru freight train movements per day at speeds between 30 to 60 mph and contains no passenger traffic. 4 night thru and 2 switching trains are also listed. Max table speed is 60mph.
11. Please provide the names and locations of all schools (elementary, junior high and high school) within the area of the crossing.
 - Carson Junior High School 525 N Westwood, Mesa, AZ
 - Dobson Montessori 745 S Extension Rd, Mesa, AZ
12. Please provide school bus route information concerning the crossing, including the number of times a day a school bus crosses this crossing.
Per Mesa Unified District there are 60 school bus crossings per day.

13. Please provide information about any hospitals in the area and whether the crossing is used extensively by emergency service vehicles.
Banner Desert Medical Center 1400 S Dobson Rd, Mesa, AZ
This crossing is used by emergency vehicles.
14. Please provide total cost of the railroad improvements to each crossing.
Cost described above.
15. Provide any information as to whether vehicles carrying hazardous materials utilize this crossing and the number of times a day they might cross it.
The City of Mesa stated they do not have any information pertaining to the use of these crossings by vehicles carrying hazardous materials.
16. Please provide the posted vehicular speed limit for the roadway.
Posted vehicle speed is 40 mph
17. Do any buses (other than school buses) utilize the crossing, and how many times a day do they cross the crossing. Bus traffic varies depending on sporting events.
According to Valley Metro, Route 104 utilizes the crossing 29 times in the northbound direction and 29 times in the southbound direction per weekday. No neighborhood buses utilize the crossing.
18. Please indicate whether any spur lines have been removed within the last three years inside a 10 mile radius of any crossings covered in this application. Please include the reason for the removal, date of the removal and whether an at-grade crossing or crossings were removed in order to remove the spur line.
None.
19. Please fill in the attached FHWA Grade Separation Guidelines Table, (from FHWA's 2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151) with a yes or no answer as to whether each item applies. Also, please provide all information to support your answers of yes or no (i.e. vehicle delay numbers, any calculations that were performed to get the answers).
20. Based on the current single track configuration at the crossings specified by this application, please provide the current traffic blocking delay per train. Please indicate the time in which vehicular traffic is delayed (1) to allow the train to pass at a crossing and (2) due to trains stopped on the track for any purpose. The delay is measured from the point that the warning devices are activated at the crossing to the time after the train has cleared the crossing and the warning devices are reset.
The City of Mesa has no information or complaints regarding delays however the delay at the crossing is really a function of the average length of the train and the average speed that is traveling.

FOR EXAMPLE: 7,000 ft. train traveling 30mph (44 fps) would result in 160 seconds or a little over 2.5 minutes of delay.

Sincerely,

DocuSigned by:

Jason Pike

305F0D5C5F9F42E...

Jason Pike

Railroad and Utility Coordinator

Arizona Department of Transportation

205 S. 17th Ave, Room 357 MD 618E

Phoenix, AZ 85007

Phone: 602-712-7149

jpike@azdot.gov

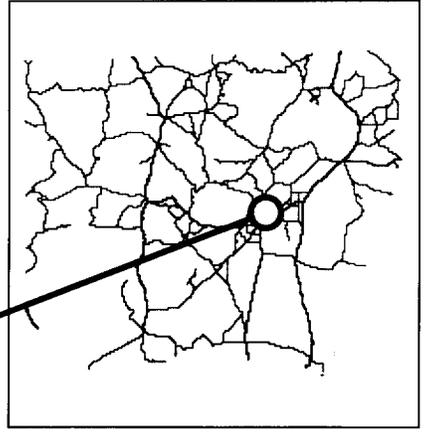
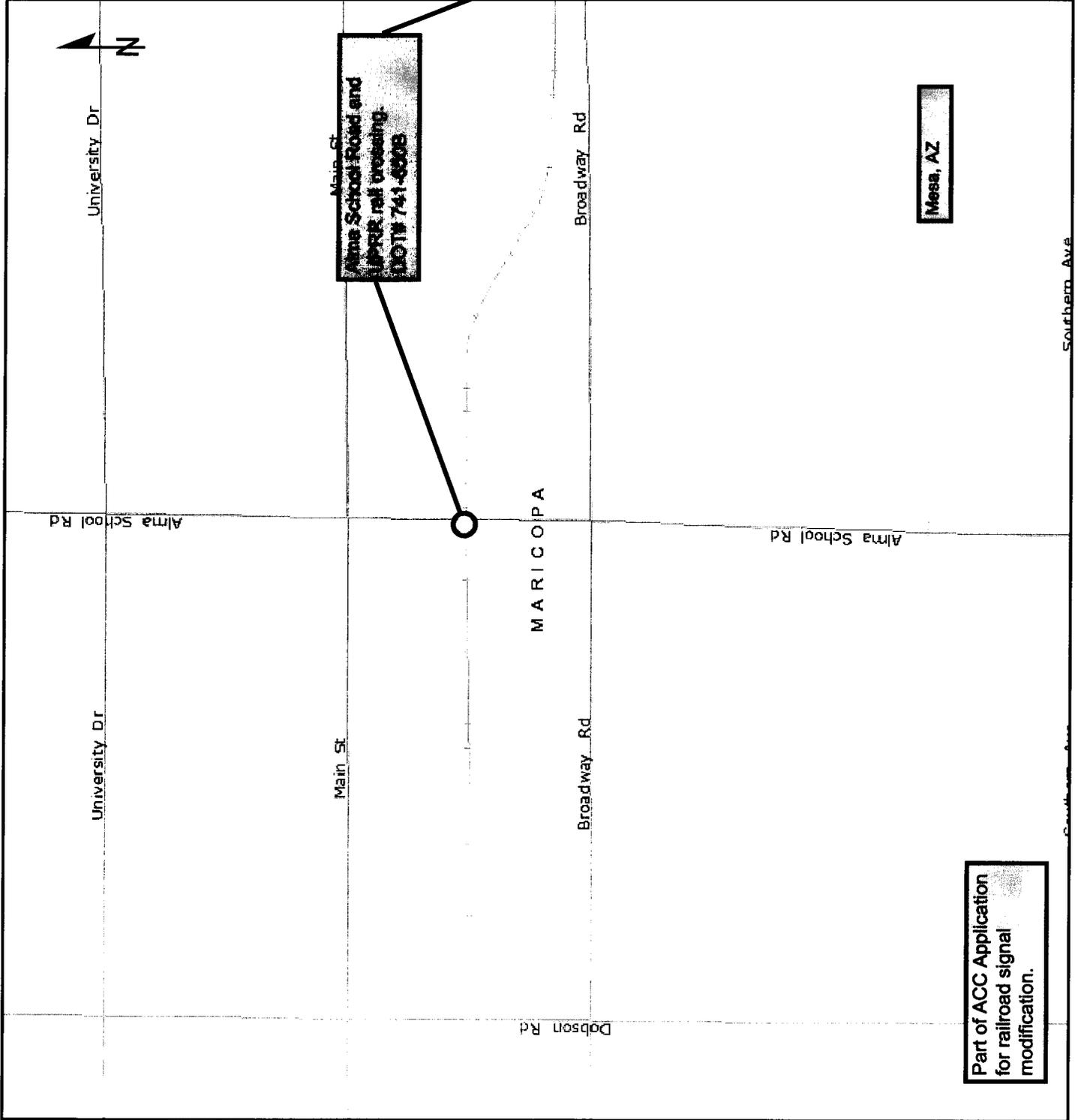
FHWA - GRADE SEPARATION GUIDELINES

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:**

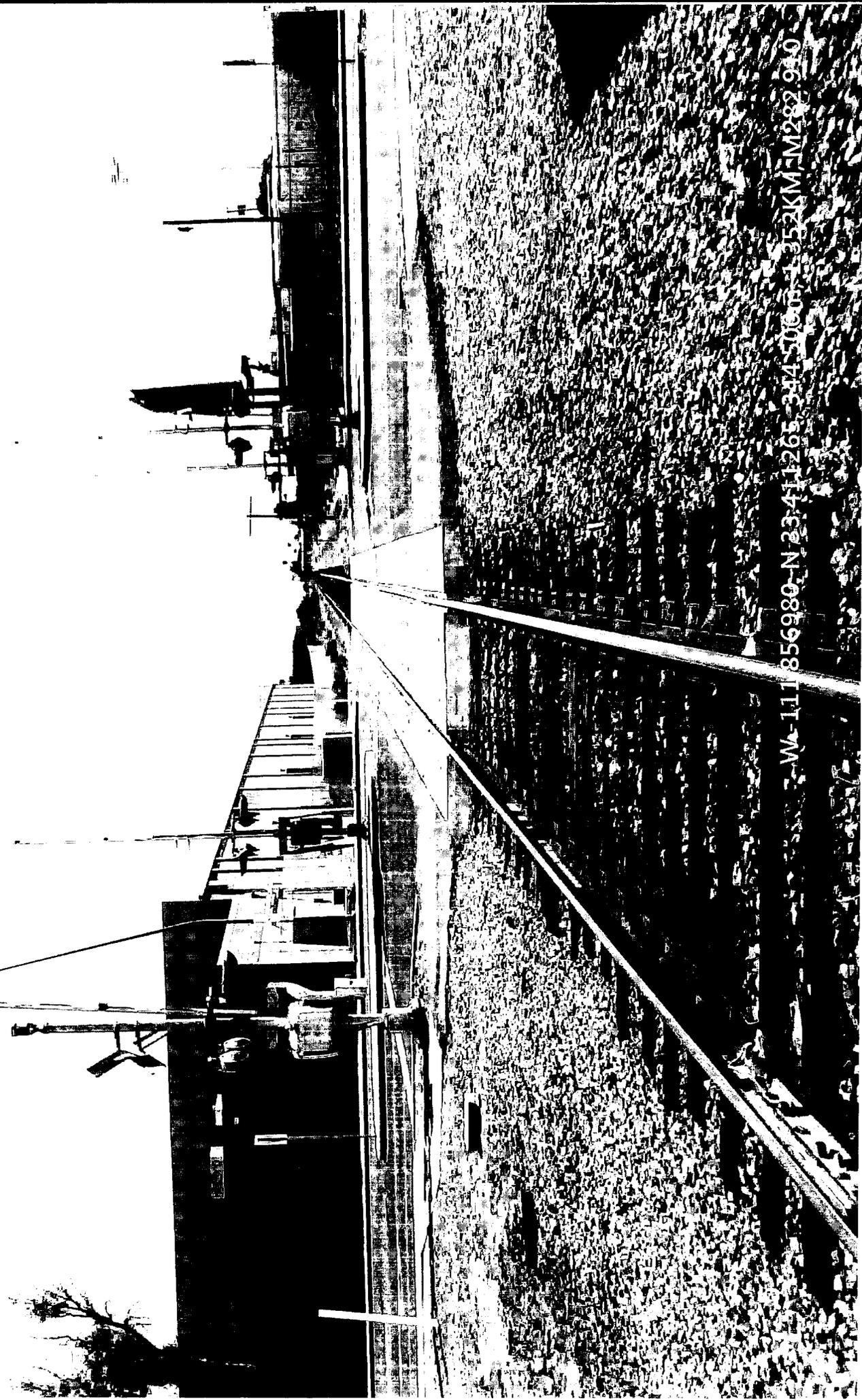
		Alma School Road
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N
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	N
	Crossing meets the criteria by 2030	N
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	N
	Crossing meets the criteria by 2030	N
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	N
	Crossing meets the criteria by 2030	N



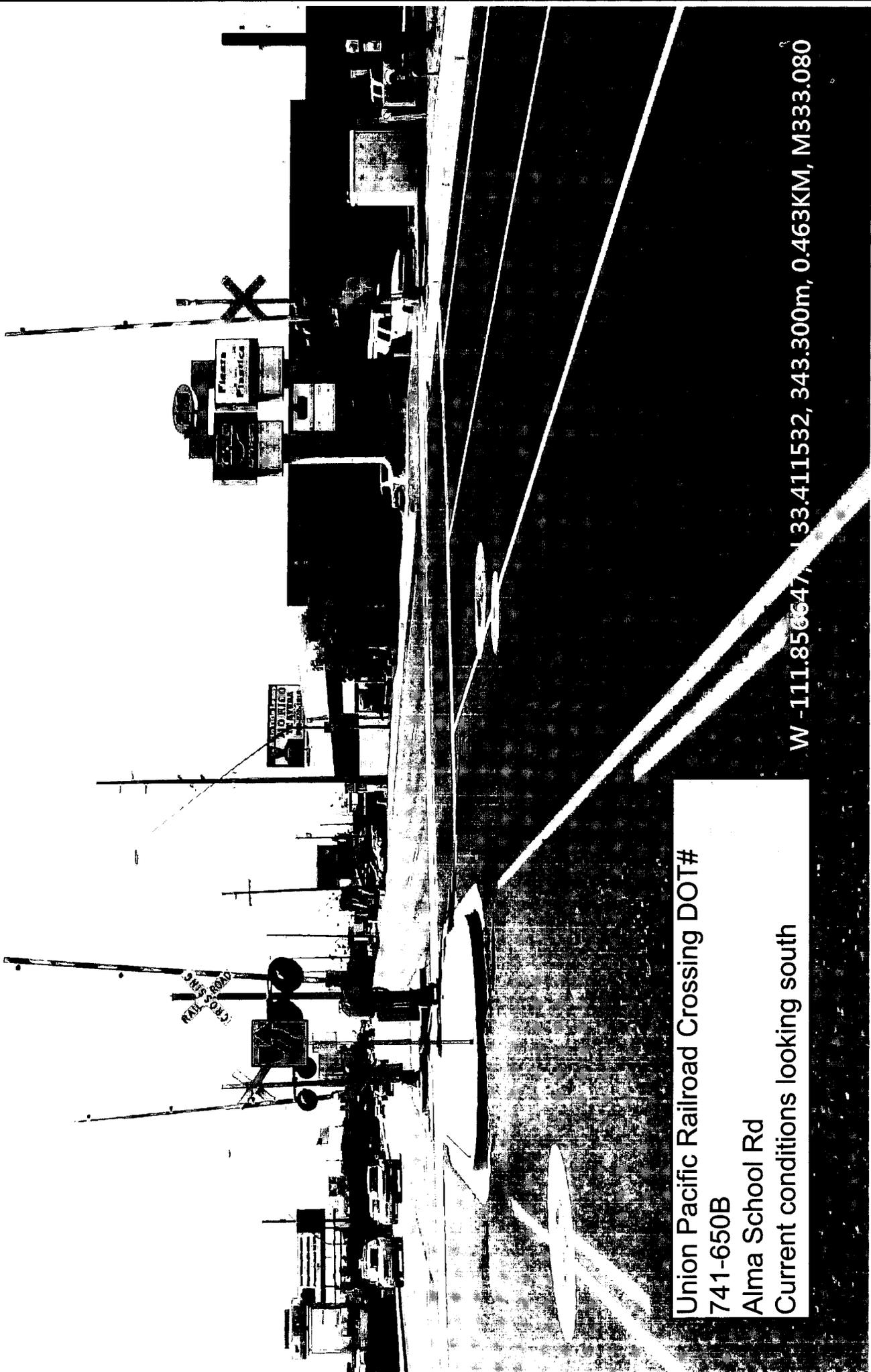
Section 130 Project



Union Pacific Railroad Crossing DOT#
741-650B
Alma School Rd
Current conditions looking east

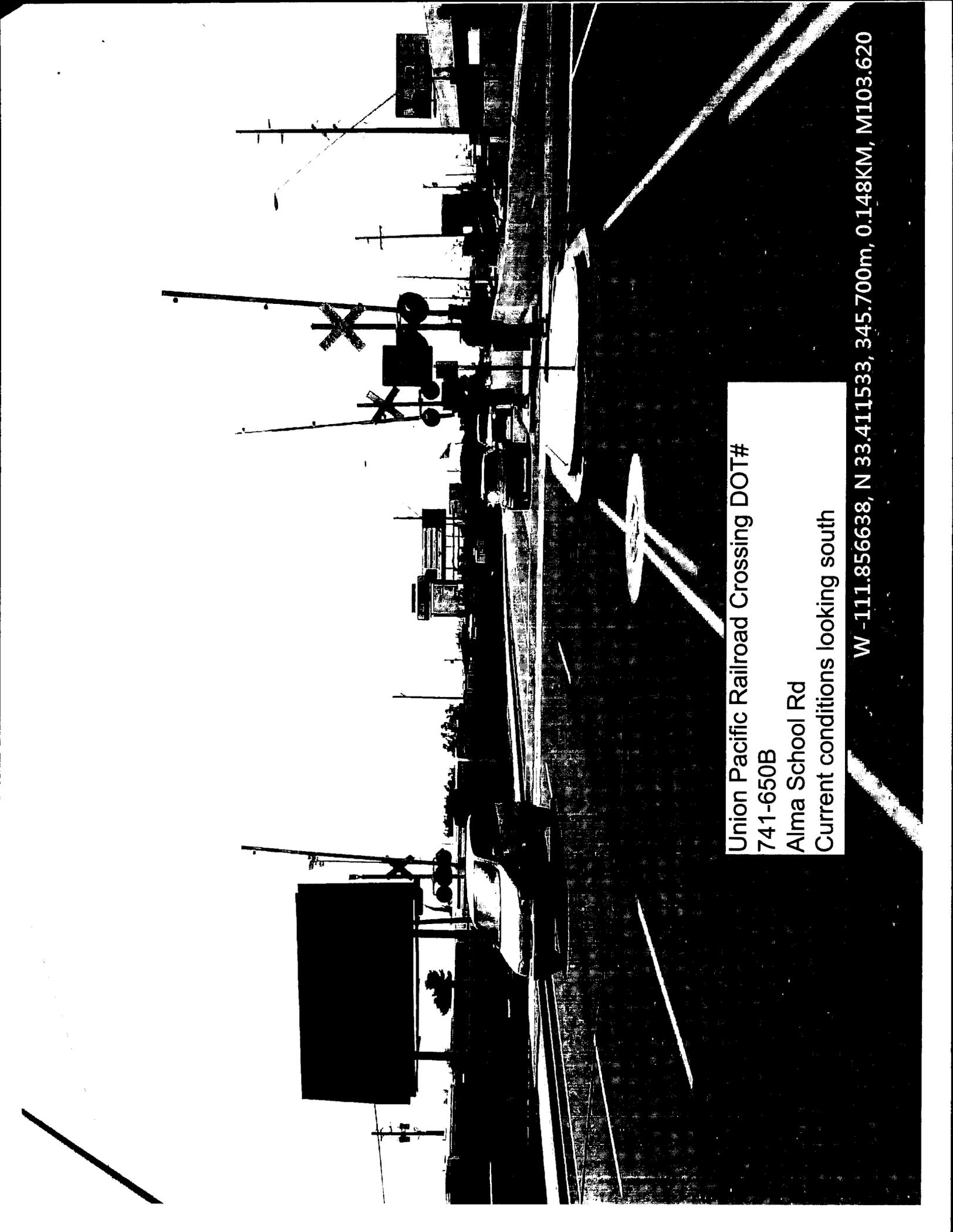


WA-111856980-N 23-41-1265-344-50605-1352KM-IM282-940



Union Pacific Railroad Crossing DOT#
741-650B
Alma School Rd
Current conditions looking south

W -111.856647, 33.411532, 343.300m, 0.463KM, M333.080



Union Pacific Railroad Crossing DOT#
741-650B
Alma School Rd
Current conditions looking south

W -111.856638, N 33.411533, 345.700m, 0.148KM, M103.620

RAILROAD ORIGINAL

**STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION**

Agreement No. 1532-91-SPTC

Agreement Addendum No. 2
Original Agreement AG Contract # KR92-1689-TRN

Railroad's Name The Union Pacific Railroad
Address 101 S. Watson Road, Arlington, TX 76010

COMPANY hereby agrees to modify the existing referenced Agreement and to do the work hereinafter set forth for the AGENCY in accordance with the original agreement, the modified provisions of this form and of the attached sheets, if any, and COMPANY agrees to receive and accept as full compensation therefore the payment provided in the agreement as modified herein.

WHEREAS: STATE and RAILROAD agree to revise original Agreement to include the current "BUY AMERICA" requirements of 23 CFR 635.410

THEREFORE: The parties hereto agree that Agreement No. 1531-91-ATSF is hereby amended to include the following: All portions of the Project whether performed by the State or Company shall be performed in compliance with 23 CFR 635.410 and 23 USC 313 as amended by Section 1518 of P.L. 112-141 Buy America Requirements. Company shall maintain documentation/certification of all products of iron, steel, or a coating of steel that are incorporated into the Project for a period of three years after completion of all obligations under this Agreement. Within a reasonable time after State's written request, Company shall make such records available for State's audit during Company's regular business hours in Company's headquarters office located in Omaha Nebraska.

The RAILROAD hereby agrees to the terms as above set forth, provided that by mutual consent this agreement may be modified or terminated at any time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

UNION PACIFIC RAILROAD COMPANY

By Victoria D. Bever
Victoria D. Bever, Manager
Utility & Railroad Engineering Section

By John J. Hovanec
John J. Hovanec
Title: AVP Engineering

Date 03/06/2015

Date 2/21/2015

Union Pacific Railroad Crossing DOT# 741-650B
Alma School Rd
UPRR/ADOT Master Agreement

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

Agreement No. 1532-91-SPTC

Agreement Addendum No. 1

Company's Name: The Union Pacific Railroad Company
Address: 101 S. Watson Road, Arlington, TX 76010

The purpose of this addendum is to modify the Company name as stated herein:

WHEREAS: Agreement No. 1532-91-SPTC terms the "RAILROAD" as SOUTHERN PACIFIC TRANSPORTATION COMPANY.

WHEREAS: Agreement No. 1532-91-SPTC is revised to term the "RAILROAD" as the UNION PACIFIC RAILROAD COMPANY.

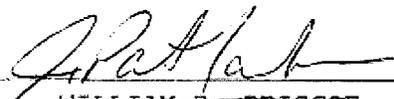
THEREFORE: The parties hereto agree that Agreement No. 1532-91-SPTC is hereby amended as shown herein. All other provisions of Agreement No. 1532-91-SPTC shall remain unabrogated.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

ARIZONA DEPARTMENT OF TRANSPORTATION

UNION PACIFIC RAILROAD COMPANY

By



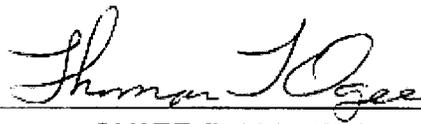
WILLIAM R. BRISCOE, P.E.

Utility & Railroad Engineering Section
J. Patrick Hackett

Date

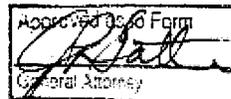
2-18-99

By



CHIEF ENGINEER

Date



Union Pacific Railroad Crossing DOT# 741-6508
Alma School Rd
UPRR/ADOT Master Agreement

A. G. CONTRACT NO. KR95-1689-TF

ARIZONA DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
UTILITY AND RAILROAD ENGINEERING SECTION

MASTER
RAILROAD AGREEMENT
For
FEDERAL AID
Railroad Crossing Projects

SOUTHERN PACIFIC TRANSPORTATION COMPANY
Agreement No. 1532-91-SPTC
RAIL/HIGHWAY SAFETY PROGRAM

THIS AGREEMENT by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein termed "RAILROAD," and STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, herein termed "STATE".

WITNESSETH:

The parties hereto desire to set forth by this instrument their understanding and agreements with respect to the installation, at various times, of railroad warning devices and/or surface crossing materials with track rehabilitation, if required, throughout the State of Arizona, where a roadway crosses the property and tracks of RAILROAD.

Agreement No. 1532-91-SPTC

Union Pacific Railroad Crossing DOT# 741-650B
Alma School Rd
UPRR/ADOT Master Agreement

1 of 7

AGREEMENT:

NOW THEREFORE, it is mutually agreed as follows:

1. The work to be performed by RAILROAD under this agreement is hereinafter referred to as "PROJECT".

2. RAILROAD agrees to furnish all labor, materials, tools, and equipment necessary to install such warning devices including necessary actuating and operating circuits and adequate instrument housing and/or roadway crossing materials with track rehabilitation, if required, upon its property at certain designated grade crossings.

Said installation shall comply with the latest standards prescribed by the Association of American Railroads and the Manual On Uniform Traffic Control Devices, Part VIII.

3. RAILROAD will prepare both a cost estimate, marked Exhibit "A" and a location plan marked, Exhibit "B", showing the general details of each PROJECT and send them to STATE for acceptance.

4. It is agreed that the work to be performed by RAILROAD is a part of a Federal-Aid project. Pursuant to the provisions of Federal-Aid Policy Guide Subchapter G, Part 646 Subpart B, there is no ascertainable net benefit to RAILROAD, and STATE agrees to reimburse RAILROAD for one hundred percent (100%) of the cost and expense incurred by RAILROAD in furnishing of materials and performing the work as described in the Cost Estimate, marked EXHIBIT "A", attached to and made a part hereof.

5. It is understood and agreed that the STATE is acting solely as an agent for the project sponsor in securing and administering Federal funds and STATE assumes no other liability hereunder for the project sponsor.

6. Prior to commencing construction of each PROJECT, Railroad agrees to notify STATE, in writing, of the actual construction start date. Upon completion of each PROJECT, RAILROAD agrees to notify STATE, in writing, of the actual completion date. The construction start date shall not be prior to receiving a notice to proceed from STATE. Construction progress payments shall not be made without the actual construction start date. Final payment shall not be made without the actual construction completion date.

7. The work for each PROJECT shall be performed by RAILROAD forces on an actual cost basis, and as supported by the analysis of estimated costs set forth in Exhibit "A". The actual cost shall be payable in payments as follows:

- a. RAILROAD will order the materials for each PROJECT, and may invoice the STATE upon receipt, for materials and related costs, as set forth in Exhibit "A".
- b. RAILROAD may submit monthly invoices for work performed and materials installed unless invoiced under subparagraph a.
- c. Minimum payment, except for final invoice, is \$5,000.
- d. Upon completion of all work under each PROJECT, RAILROAD shall arrange for a joint close-out inspection of the completed PROJECT. Upon determination by STATE that the work has been completed in accordance

Agreement No. 1532-91-SPTC

with Exhibits "A" and "B", RAILROAD will submit final and complete invoice to the STATE. STATE agrees to pay RAILROAD the difference between the final invoice and any previous payments for PROJECT. Any amount with which STATE disagrees shall be paid under protest, subject to resolution.

e. All invoices will be paid by STATE within sixty (60) days of receipt.

All expenses incurred by RAILROAD for work which STATE is obligated to reimburse RAILROAD hereunder, including all work incidental to such work but not specifically mentioned herein, shall be subject to the provisions of the Federal-Aid Policy Guide Subchapter B Part 140 Subpart I.

8. Pursuant to A.R.S. Sections 35-214, 35-215 and 41-1279.04, the books of RAILROAD shall be open for inspection and audit by authorized representatives of STATE and the Federal Government for a period of not less than five (5) years from the date final payment has been received by RAILROAD. State agrees to pay RAILROAD any sums found to be owing as a result of an audit within sixty (60) days of receipt of the audit by the Utility and Railroad Engineering Section of STATE. RAILROAD agrees to reimburse STATE, within sixty (60) days of notification for any amount STATE disallows as a result of its audit. Any audit exceptions with which RAILROAD disagrees shall be paid to STATE under protest subject to resolution.

9. All invoices shall contain STATE's project number and agreement number. The invoice shall be sent to:

Agreement No. 1532-91-SPTC

Union Pacific Railroad Crossing DOT# 741-650B
Alma School Rd
UPRR/ADOT Master Agreement

4 of 7

ARIZONA DEPARTMENT OF TRANSPORTATION
Utility and Railroad Engineering Section
205 South 17th Ave. Mail Drop 618E
Phoenix, Arizona 85007-3212

10. Once installation of railroad warning devices and/or roadway crossing material has been completed, RAILROAD shall maintain, in kind, the railroad warning devices and the crossing material two feet outside of each rail as long as they remain in place. However, RAILROAD shall be entitled to receive any contribution toward the cost of such maintenance as may be now or hereafter made available by means of any law, ordinance, regulation, order, grant or by other means or sources.

11. Claims and disputes between STATE and RAILROAD involving sums less than \$100,000 and arising out of the terms of this Agreement relating to work performed, invoicing and similar matters, shall be subject to arbitration, at the request of either party, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining; provided, however, that claims or disputes arising out of personal injury, death, property damage, or environmental incidents shall not be subject to arbitration without the concurrence of both parties, except to the extent otherwise required by the rules of Arizona courts.

12. In compliance with the regulations of the United States Department of Transportation, RAILROAD hereby agrees to comply fully with all of the provisions of Appendix "A", attached hereto and by this reference made a part of this Agreement; provided, however, that Appendix "A" shall be applicable only in those cases where RAILROAD does not perform the work contemplated in this Agreement with its own forces.

Agreement No. 1532-91-SPTC

13. This Agreement is subject to the budgetary limitations set forth in Arizona Revised Statutes Subsection 28-1823 through 28-1826 inclusive and is further subject to the provisions of Chapter 1 of Title 35, Arizona Revised Statutes.

14. STATE and RAILROAD each agrees to be liable to the other party for its own acts of negligence and the negligence of its own employees.

15. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of RAILROAD and the assigns of STATE.

16. RAILROAD is required to comply with Executive Order 75-5, "Non-Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Agreement.

17. Pursuant to A.R.S. Subsection 38-511, STATE may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of STATE or any of its departments or agencies is, at any time while this Agreement or any extension of it is in effect, an employee of any other party to this Agreement with respect to the subject matter of this Agreement.

:
:
:
:
:

Agreement No. 1532-91-SPTC

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year signed by both parties.

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

ARIZONA DEPART. OF TRANSPORTATION
HIGHWAY DIVISION

By J. L. [Signature]
Its MANAGER-CONTRACTS

By William R. Briscoe
Manager of Utility & Railroad
Engineering Section

Date October 2, 1995

Date 10-17-95

Approved as to form
[Signature]
ATTORNEY 10/5/95

STATE OF COLORADO)
) ss.
COUNTY of DENVER)

The foregoing instrument was acknowledged before me this 2nd day of October, 1995, by Ms. J. L. [Signature], the MANAGER-CONTRACTS of SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, on behalf of the corporation.

My Commission Expires
ALISON DILGES
11-97
My Commission Expires 2-11-97

Notary Public Alison Dilges

STATE OF ARIZONA)
) ss.
COUNTY of MARICOPA)

The foregoing instrument was acknowledged before me this 17 day of October, 1995, by William R. Briscoe, the Manager of Utility and Railroad Engineering Section of the Arizona Department of Transportation, on behalf of the STATE.

My Commission Expires:
[Signature]

[Signature]
Notary Public

Agreement No. 1532-91-SPTC

Union Pacific Railroad Crossing DOT# 741-650B
Alma School Rd
UPRR/ADOT Master Agreement

APPENDIX A
(Revised)

II EQUAL OPPORTUNITY

1. Selection of Labor:

During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.

2. Employment Practices:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractors commitments under this section II-2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of this Section II-2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

a. Compliance With Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix 8 of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

f. Incorporation of Provisions: The contractor shall include the provision of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.