

AGREEMENT FOR CONSTRUCTION
AND FUNDING OF
GRADE SEPARATIONS

Between

**PINAL COUNTY, CITY OF MARICOPA,
CITY OF CASA GRANDE, CITY OF ELOY**
And
UNION PACIFIC RAILROAD COMPANY

This **AGREEMENT FOR CONSTRUCTION AND FUNDING OF GRADE SEPARATIONS (“Agreement”)** is entered into this 27th day of May, 2008, between **PINAL COUNTY, ARIZONA, and the CITY OF MARICOPA, CITY OF CASA GRANDE, and CITY OF ELOY**, all of which are governmental agencies of the State of Arizona (hereinafter referred to jointly as “Agencies” and individually by name where appropriate) and the **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation operating a railroad in the State of Arizona (hereinafter referred to as “UPRR”).

RECITALS

A. UPRR currently is constructing a second main track on and along the Gila Subdivision (Yuma – Tucson) main line in Arizona wherever there is currently only a single main line track. UPRR’s project requires construction of a second main track through and across existing public grade crossings within the municipal limits of Agencies. A list of existing public grade crossings of UPRR’s Gila Subdivision main line located within the jurisdiction of one or more than one of the Agencies is attached hereto as Exhibit A and incorporated herein by reference. The listing of crossings on Exhibit A excludes Maricopa Road (SR 347) in the City of Maricopa because that highway is under the jurisdiction of the Arizona Department of Transportation and is not covered by this Agreement.

B. UPRR and Agencies have met on several occasions to discuss UPRR’s double track construction project. UPRR has presented maps and other information to Agencies. UPRR has identified each public crossing involved in the double track project as listed on Exhibit A. Agencies and each of them understand the scope of the project as it may affect roadway grade crossing within their respective jurisdictions. Agencies have expressed concern about grade separations that may be required in the future at one or more of the grade crossings listed on Exhibit A.

C. UPRR wishes to obtain Agencies' support and cooperation with respect to construction of the double track project across the grade crossings listed on Exhibit A. Agencies wish to have UPRR address Agencies' concerns about future grade separations. UPRR and Agencies desire to enter into this binding Agreement to address grade separations and to secure Agencies' cooperation with respect to the construction of the double track project across the grade crossings listed on Exhibit A.

NOW, THEREFORE, the parties hereto make and enter into the following binding agreement:

AGREEMENT

1. Grade Separations. (a) Subject to the terms of this Agreement, UPRR agrees to contribute a share of the construction costs of the next four grade separations to be constructed over or under the Gila Subdivision main line in Pinal County by Agencies or any of them ("Four Grade Separations", or individually, "Grade Separation"). The identity of the Four Grade Separations and the amount to be contributed by UPRR for each Grade Separation shall be determined by Agencies in accordance with the terms of this Agreement but otherwise in their sole discretion. Agencies, with the leadership and guidance of Pinal County and within a reasonable time period after the effective date of this Agreement, shall adopt reasonable and equitable procedures for such determinations and shall provide copies of said procedures to UPRR.

(b) Agencies hereby covenant to close at least one public grade crossing with active warning devices listed on Exhibit A for each Grade Separation to be constructed in order for the Grade Separation to qualify for UPRR contribution. This may be the grade crossing replaced by the Grade Separation or it may be a grade crossing at another location on the Gila Subdivision in Pinal County as Agencies shall designate. The application for closing a grade crossing must be included in the Agency application to the Arizona Corporation Commission ("ACC") for the Grade Separation. If the ACC denies the grade crossing closure, then the Grade Separation will not qualify for UPRR contribution.

2. UPRR Contribution. (a) Notwithstanding anything to the contrary in this Agreement, UPRR's total aggregate contribution toward construction of the Four Grade Separations is capped at \$35 million ("Maximum Contribution"). Agencies shall determine, in accordance with the procedures adopted pursuant to Section 1(a), the portion of the Maximum Contribution that will be allocated to each qualifying Grade Separation.

(b) UPRR agrees to pay the Maximum Contribution in the following manner:

- \$3 million thereof shall be paid to Agencies (in the manner that Agencies shall designate in writing) within one year following the date of execution of this

Agreement by all parties. This amount is to be used by Agencies only for preliminary engineering and administrative expenses for the proposed Grade Separation projects.

- one-half of the remaining \$32 million shall be paid to Agencies within thirty days after notification from Agencies that the first construction contract has been awarded for a qualifying Grade Separation.
- the balance of the Maximum Contribution shall be paid to Agencies within thirty days after notification from Agencies that the construction contract has been awarded for the second qualifying Grade Separation.

Agencies shall safeguard and handle all amounts paid by UPRR to Agencies in accordance with applicable state regulations and shall employ effective practices to insure that all funding paid out for the qualifying Grade Separations is paid only for actual work and materials in a reasonable manner.

3. Agency Commitments. Agencies and each of them make the following binding and enforceable commitments, in accordance with the terms and conditions of this Agreement, to UPRR with respect to the grade separation projects:

(a) Agencies will identify in writing one of the Four Grade Separations as promptly as possible, and thereafter keep UPRR informed in writing as to the identity and order of construction of all Four Grade Separations as such determinations are made by Agencies.

(b) One or more of the Agencies will begin construction of the first qualifying Grade Separation within ten years from the date of this Agreement. "Begin construction" means that a project has gone out for bid and a construction contract has been awarded.

(c) One or more of the Agencies will begin construction of all of Four Grade Separations that qualify within twenty-five years from the date of this Agreement. However, if commencement of construction of the fourth of Four Grade Separations that qualify is not reasonably possible within such twenty-five year period and four of the at-grade crossings listed on Exhibit A have been closed by Agencies, then Agencies' obligation to begin construction within such twenty-five year period will be limited to three of Four Grade Separations that qualify. Such limitation of Agencies' construction obligation to three of Four Grade Separations will not affect UPRR's contribution obligations with respect to the Four Grade Separations and UPRR shall not be entitled to any refund under subparagraph (d) below for failure to construct the Fourth of the Four Grade Separations unless there is no reasonable possibility of a Fourth Grade-Separated Crossing begin constructed within a reasonable period of time after the twenty-five year period.

(d) UPRR and Agencies will meet and determine how to apply any funds remaining from the Maximum Contribution if all of Four Grade Separations that qualify are not underway within twenty-five years from the date of this Agreement. The goal in all cases is to apply the Maximum Contribution to the Four Grade Separations, but if there is no reasonable possibility of construction of all of Four Grade Separations that qualify being commenced within a reasonable period of time after the end of the twenty-five years, Agencies shall refund to UPRR any monies remaining (except for monies Agencies have previously expended toward construction of a Grade-Separated Crossing or are contractually obligated to pay third parties for cancellation of contracts related to a Grade-Separated Crossing) from amounts contributed by UPRR under this Agreement, and UPRR will have no further obligation to contribute toward the Four Grade Separations.

(e) UPRR's Maximum Contribution as provided for in this Agreement shall constitute the only contribution UPRR will be required to make toward the Four Grade Separations, notwithstanding any federal, state or local contributions or funding sources that may be applied by Agencies toward any of the Four Grade Separations. Agencies and each of them promise not to seek any additional contribution from UPRR for any of the Four Grade Separations nor shall UPRR be obligated to pay any additional share or contribution.

4. UPRR Double Track Project Cooperation.

(a) Provided that this Agreement is in full force and effect, Agencies and each of them agree to support UPRR's double track project and in specific to support and approve construction of the additional main track over and across each grade crossing listed on Exhibit A. Agencies jointly and severally agree to provide one or more letters to or filings with the Arizona Corporation Commission ("ACC") advising the Commission that Agencies and each of them support and approve of UPRR's project applications for construction of one or more additional tracks across all public grade crossings within the jurisdiction of Agencies. If appropriate, Agencies will endeavor to appear at ACC hearings and public meetings to advise the ACC that they support and approve UPRR's applications to the ACC for authority to alter the subject grade crossings by installing a second main line track at grade.

(b) UPRR shall file this Agreement (when effective) with the ACC in support of each application it files for an additional main track over and across a public grade crossing listed on Exhibit A. Agencies and each of them agree to provide statements confirming the effectiveness of this Agreement if so requested by the ACC or UPRR

5. Grade Separation and Other Projects. (a) Provided that this Agreement is in full force and effect, UPRR agrees to support and approve construction of each Agency grade separation project covered herein, subject to execution by Agency of UPRR's typical construction and maintenance agreement (which shall be consistent

with the terms of this Agreement, and subject to Agencies obtaining necessary property rights and right of entry from UPRR as is customary for any project on railroad right of way, including UPRR's standard practices for determining compensation. UPRR further commits that it will expedite review of all Agency plans to modify crossings and to build grade separation projects, such review to be in accordance with UPRR's standard public projects guide.

(b) UPRR and Agencies agree to maintain open lines of communication about transportation and growth projects where their respective interests overlap, except that confidential or proprietary information will not be included in such communications. UPRR acknowledges the interest expressed by Agencies to further economic development in the region by developing additional rail spurs for movement of freight. UPRR will cooperate with Agencies in processes established to streamline the addition of rail spurs when approached by economic development prospects needing additional rail service.

(c) UPRR will participate in discussions with Agencies and other Arizona governmental entities concerning the feasibility of passenger and commuter train operations. UPRR will work with Agencies to encourage ADOT and other Arizona governmental entities to include Agencies in such discussions.

(d) Agencies agree to expedite governmental review and approval of all UPRR permit applications.

(e) UPRR agrees to cooperate with the City of Maricopa's proposal to relocate the Amtrak station to a new site with a multi-modal, park-and-ride facility.

(f) UPRR will provide a preliminary construction schedule to Agencies for the double track work at crossings. UPRR will update this schedule as necessary.

(g) UPRR agrees to donate the former railroad depot at Casa Grande to the City of Casa Grande without charge upon request to do so. City and UPRR shall negotiate in good faith for the removal of the depot from the railroad right of way by City within a reasonable time. From and after donation to the City, the City shall fence off the depot as reasonably requested by UPRR and shall be solely responsible for all further maintenance and upkeep of the depot and fencing.

(h) UPRR agrees to reimburse the Maricopa Domestic Water District for the reasonable documented out-of-pocket costs of extending (i) the thirty-inch steel casing of the twelve-inch pressurized water pipeline located at UPRR Milepost 897.80 at SR 347, and (ii) the eighteen-inch steel casing of the eight-inch pressurized water pipeline located at UPRR Milepost 897.47, UPRR Station 22700+00.

(i) UPRR agrees to reimburse the City of Casa Grande's, its wholly owned utility company, or any successor thereto, for the reasonable documented out-of-

pocket costs of extending the sixteen-inch steel casing of the nine-inch pressurized water pipeline located at UPRR Milepost 906.35 near Anderson Road.

(j) In addition to installing the grade crossing improvements in the City of Eloy shown on the plans provided by UPRR to the City, UPRR agrees to contribute Fifty Thousand Dollars (\$50,000) to the City of Eloy for City's use in modifying, as and when City deems it necessary, the street intersections in the vicinity of the grade crossings being altered for UPRR's double tracking project. UPRR will make such contribution within ten (10) days after this Agreement is signed by all parties.

(k) UPRR and Agencies agree to meet to discuss public safety issues associated with trespassing on the UPRR right-of-way and means of addressing such safety issues.

6. Effectiveness and Termination of Agreement.

(a) This Agreement shall be effective when signed by all parties hereto. The date of this Agreement shall be the date on which the last party signs it.

(b) UPRR may unilaterally terminate this Agreement without penalty or obligation to Agencies if (i) the ACC (A) rejects or disapproves, or attaches substantial adverse conditions to, any UPRR double track project grade crossing alteration applications regarding public grade crossings within Agencies' jurisdiction as listed on Exhibit A, or (B) orders a grade separation at any public grade crossing within Agencies' jurisdiction as listed on Exhibit A in response to a UPRR application to construct an additional main track at grade over and across such crossing, unless such order contains terms which are substantially the same in form and substance as the terms of this Agreement, or (ii) if Agencies fail to comply with their obligation under Section 3(b) to begin construction of the first qualifying Grade Separation within ten years from the date of this Agreement. UPRR's right to terminate this Agreement upon adverse action by the ACC as set forth above shall be effective regardless of whether or not Agencies and each of them have supported UPRR's double track crossing applications. Upon termination of this Agreement, Agencies shall refund to UPRR any monies remaining from amounts contributed by UPRR under this Agreement, except for monies Agencies are contractually obligated to pay third parties for cancellation of contracts for the preliminary engineering work referred to under Section 2 above.

7. Miscellaneous Provisions.

(a) This Agreement constitutes the entire agreement between UP and Agencies relating to this transaction. All prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of UP or Agencies. All rights and obligations of UP and Agencies set forth in this

Agreement are integral parts of this Agreement. The consideration inducing UP and Agencies to enter into this Agreement includes all of the commitments by UP to Agencies, and by Agencies to UP, as set forth in this Agreement. The terms of this Agreement have been arrived at after considerable arms length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

(b) Except as specifically set forth in this Agreement, none of the parties hereto waives, releases or relinquishes any rights any such party may have with respect to construction of railroad trackage or facilities or with respect to grade separation or grade crossing projects in the State of Arizona.

(c) No modifications to this Agreement shall be effective unless in writing signed by all parties hereto.

(d) This Agreement shall be governed by Arizona law.

(e) Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

PINAL COUNTY, ARIZONA

UNION PACIFIC RAILROAD COMPANY

By: David Suid
Title: Chairman

By: DG Duffy
Title: E.V.P.O

Attest:
Shari Clegg
Date: 5/21/08

Attest:
C.W. Saylor
Date: 5/27/08

CITY OF CASA GRANDE, ARIZONA

CITY OF ELOY, ARIZONA

By: Robert Galt
Title: Mayor

By: [Signature]
Title: Mayor

Attest:
Ronald S. Miller
Date: 5/19/08

Attest:
Mary Myers
Date: 5/21/08

CITY OF MARICOPA, ARIZONA

By: [Signature]
Title: MAYOR

Attest:
Vanessa Buerks
Date: 05/20/08

EXHIBIT A

STATE	SUBDIVISION	MILE POST	CITY	COUNTY	ROAD AUTHORITY	STREET NAME	DOT NO.	CROSSING CLASSIFICATION (PUB, PVT, PED)
AZ	GILA	891.34	MARICOPA	PINAL	Pinal Co.	RIO BRAVO RD	741341N	Public
AZ	GILA	893.38	MARICOPA	PINAL	Pinal Co.	RALSTON RD	741342V	Public
AZ	GILA	900.25	MARICOPA	PINAL	City Maricopa	PORTER. RD	741345R	Public
AZ	GILA	901.50	CASA GRANDE	PINAL	City Maricopa	WHITE PARK RD	741346X	Public
AZ	GILA	903.91	CASA GRANDE	PINAL	City Maricopa	HARTMAN ROAD	741347E	Public
AZ	GILA	906.35	CASA GRANDE	PINAL	Pinal Co.	ANDERSON RD	741351U	Public
AZ	GILA	911.26	CASA GRANDE	PINAL	Casa Grande	MONTGOMERY ROAD	741353H	Public
AZ	GILA	915.01	CASA GRANDE	PINAL	Pinal Co.	ETHINGTON ROAD	741357K	Public
AZ	GILA	917.40	CASA GRANDE	PINAL	Casa Grande	THORNTON RD	741358S	Public
AZ	GILA	918.76	CASA GRANDE	PINAL	Casa Grande	SACATON ST	741362G	Public
AZ	GILA	918.86	CASA GRANDE	PINAL	Casa Grande	FLORENCE ST	741363N	Public
AZ	GILA	919.18	CASA GRANDE	PINAL	Casa Grande	HERMOSILLO ST	741364V	Public
AZ	GILA	919.90	CASA GRANDE	PINAL	Casa Grande	TREKELL RD	741367R	Public
AZ	GILA	920.70	CASA GRANDE	PINAL	Pinal Co.	KEELING ROAD	741368X	Public
AZ	GILA	921.17	CASA GRANDE	PINAL	Pinal Co.	PEART RD	741371F	Public
AZ	GILA	923.69	CASA GRANDE	PINAL	Casa Grande	COX ROAD	741372M	Public
AZ	GILA	924.92	CASA GRANDE	PINAL	Casa Grande	SUNLAND GIN RD	741374B	Public
AZ	GILA	928.64	ELOY	PINAL	Eloy	TOLTEC ROAD	741375H	Public
AZ	GILA	930.28	ELOY	PINAL	Eloy	HOUSER ROAD	741376P	Public
AZ	GILA	931.95	ELOY	PINAL	Eloy	BATTAGLIA RD	741377W	Public
AZ	GILA	932.40	ELOY	PINAL	Eloy	ELEVEN MILE RD	741707A	Public
AZ	GILA	933.31	ELOY	PINAL	Eloy	MAIN ST	741708G	Public
AZ	GILA	933.62	ELOY	PINAL	Eloy	SUNSHINE BLVD	741709N	Public
AZ	GILA	934.88	PICACHO	PINAL	Eloy	LA PALMA RD	741710H	Public
AZ	GILA	938.52	PICACHO	PINAL	Pinal Co.	PICACHO SCHOOL RD	741712W	Public
AZ	GILA	950.22	RED ROCK	PINAL	Pinal Co.	PARK LINK DRIVE	741714K	Public
AZ	GILA	956.26	RED ROCK	PINAL	Pinal Co.	MISSILE BASE ROAD	741716Y	Public