



**Chandler - Arizona**  
*Where Values Make The Difference*



**MEMORANDUM                      Transportation & Development – TDA13-012**

**DATE:**            AUGUST 16, 2012

**TO:**                MAYOR & COUNCIL

**THRU:**            RICH DLUGAS, CITY MANAGER *RD*  
                         PAT MCDERMOTT, ASSISTANT CITY MANAGER *J*  
                         R. J. ZEDER, TRANSPORTATION & DEVELOPMENT DIRECTOR *RJZ*  
                         DANIEL W. COOK, TRANSPORTATION MANAGER *DC*  
                         SHEINA HUGHES, CITY ENGINEER *SH*

**FROM:**            PAUL YOUNG, SENIOR ENGINEER *PHY*

**SUBJECT:**        RESOLUTION NO. 4628 AUTHORIZING AND APPROVING A REVISED AGREEMENT WITH THE UNION PACIFIC RAILROAD FOR THE RECONSTRUCTION AND WIDENING OF OCOTILLO ROAD ACROSS THE UNION PACIFIC RAILROAD EAST OF ARIZONA AVENUE IN AN ESTIMATED AMOUNT OF \$621,251.

**RECOMMENDATION:** Staff recommends that Council pass and adopt Resolution No. 4628 authorizing the City to enter into a revised agreement with the Union Pacific Railroad Company for the reconstruction and widening of Ocotillo Road across the Union Pacific Railroad east of Arizona Avenue in an estimated amount of \$621,251.

**BACKGROUND/DISCUSSION:** In connection with the Ocotillo Road Improvements project, the existing at-grade public railroad crossing east of Arizona Avenue requires reconstruction and widening for a new four lane roadway. The work involves installation of new concrete panels, rail, automatic flashing crossing light signals with gates, and construction flagging services. An agreement for a new Public Highway At-Grade Crossing Improvement with the Union Pacific Railroad is required to grant the City a property right to establish and construct the new crossing.

On March 8, 2012, the City Council passed and adopted Resolution No. 4580 authorizing an agreement with the Union Pacific Railroad for the reconstruction and widening of the existing railroad crossing at Ocotillo Road. The Union Pacific Railroad has required the agreement to be revised as follows:

- The estimate for construction, engineering services, and construction flagging of the crossing has increased from \$584,725 to \$593,851.

- The Union Pacific Railroad has added additional language to the agreement that maintains the Union Pacific Railroad's eligibility for any federal, state, local or other public funds that may become available for the maintenance and repair of the automatic flashing crossing light signals and gates.

Upon execution and delivery of the revised agreement, the City will pay the Union Pacific Railroad the sum of \$27,400 to establish the property right. The City will also reimburse the Union Pacific Railroad for actual costs incurred by the Railroad for the installation of the crossing in an estimated amount of \$593,851; for a total estimated amount of \$621,251. Additionally, the City will seek approval of the new crossing from the Arizona Corporation Commission.

**FINANCIAL IMPLICATIONS:**

Cost(s): \$621,251  
Savings: N/A  
Long Term Costs: N/A

Fund Source:

<u>Account No.:</u>	<u>Fund:</u>	<u>Program Name:</u>	<u>CIP Funded:</u>	<u>Funds:</u>
415.3310.6517.0.6ST607	Impact Fee	Ocotillo (AZ to McQueen)	Yes	\$621,251

**PROPOSED MOTION:** Move to pass and adopt Resolution No. 4628 authorizing the City to enter into a revised agreement with the Union Pacific Railroad Company for the reconstruction and widening of Ocotillo Road across the Union Pacific Railroad east of Arizona Avenue in an estimated amount of \$621,251; and authorizing the City Engineer to execute, deliver, and deposit into escrow the approved agreement, along with all other documents and instructions necessary to consummate the transaction.

Attachments: Resolution No. 4628, Revised Agreement, Location Map

RESOLUTION NO. 4628

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING A REVISED AGREEMENT BETWEEN THE UNION PACIFIC RAILROAD AND THE CITY OF CHANDLER FOR THE RECONSTRUCTION AND WIDENING OF AN EXISTING PUBLIC ROAD CROSSING AT OCOTILLO ROAD ACROSS THE UNION PACIFIC RAILROAD FOR A TOTAL ESTIMATED AMOUNT OF \$621,251

WHEREAS, Resolution No. 4628 is a revised agreement between Union Pacific Railroad and the City of Chandler for the reconstruction and widening of an existing public road crossing at Ocotillo Road. On March 8, 2012, City Council passed and adopted Resolution No. 4580 for a previous road crossing agreement. This revised agreement supersedes the previously approved agreement.

WHEREAS, the City of Chandler desires to undertake as its project the reconstruction and widening of the existing Ocotillo Road at-grade public crossing; and

WHEREAS, the Union Pacific Railroad, pursuant to the covenants contained in the revised new Public Highway At-Grade Crossing Improvement Agreement, will grant to the City a property right to establish and use a new concrete at-grade public street crossing with automatic flashing crossing light signals with gates in connection with the reconstruction and widening on Ocotillo Road as such crossing is located at Railroad Milepost 933.10 on the Chandler Industrial Lead and on and across the portions of the Railroad's property described in Exhibits "A", "A-1", and "A-2" attached hereto and made a part hereof; and

WHEREAS, the amount of the revised new Public Highway At-Grade Crossing Improvement Agreement is \$27,400 for the property right; and an estimated amount of \$593,851 for the crossing reconstruction and widening for a total estimated amount of \$621,251.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That the City of Chandler is authorized to enter into the revised New Public Road Crossing Agreement with the Union Pacific Railroad Company.

Section 2. That the City Engineer is authorized to execute, deliver, and deposit into escrow the approved Agreement, along with all other documents and instructions necessary to consummate the transaction.

Section 3. That all other legal documents required for this transaction shall be in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

**CERTIFICATION**

I HEREBY CERTIFY that the above and foregoing Resolution No. 4628 was duly passed and adopted by the City Council of Chandler, Arizona, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



**PUBLIC HIGHWAY AT-GRADE  
CROSSING IMPROVEMENT  
AGREEMENT**

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BETWEEN

**UNION PACIFIC RAILROAD COMPANY**

AND THE

**CITY OF CHANDLER**

COVERING

**THE RECONSTRUCTION AND WIDENING OF THE  
EXISTING OCOTILLO ROAD AT-GRADE PUBLIC ROAD  
CROSSING  
(DOT NO. 741-680T)**

AT

**RAILROAD MILE POST 933.10 – CHANDLER INDUSTRIAL LEAD**

IN

**CHANDLER,  
MARICOPA CITY,  
ARIZONA**



UPRR Folder No.: 2611-72

UPRR Audit No. 255200

## PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, or its predecessor in interest, with a mailing address at 1400 Douglas Street, MS 1690, Omaha, Nebraska, 68179-1690 (“Railroad”), and the **CITY OF CHANDLER**, an Arizona municipal corporation with a mailing address at PO Box 4008, Chandler, Arizona 85244 (“City”).

### RECITALS:

Presently, the City utilizes the Railroad’s property for the existing Ocotillo Road at-grade public road crossing, (DOT No. 741-680T), at Railroad’s Mile Post 933.10 on it’s Chandler Industrial Lead, in Chandler, Maricopa County, Arizona.

The City now desires to undertake as its project (the “Project”) the reconstruction and widening of the existing Ocotillo Road at-grade public road crossing. The existing aforementioned roadway, as reconstructed and widened is hereinafter the “Roadway” and where the Roadway crosses the Railroad’s property is the “Crossing Area.”

The right of way presently utilized by the City for the existing at-grade public road crossing, is not sufficient to allow for the reconstruction and widening of the Roadway. Therefore, under this Agreement, the Railroad will be granting an additional right of way right to the City to facilitate the reconstruction and widening of the Roadway. The portion of Railroad’s property that City needs a right to use in connection with the road crossing (including the right of way area presently utilized by the City) is shown in the location shown on the Railroad Location Print marked **Exhibit A**, specified on the Survey Print of Rights marked **Exhibit A-1**, and described in the Legal Description of Rights marked **Exhibit A-2**, each exhibit being attached hereto and hereby made a part hereof (the “Crossing Area”).

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

### AGREEMENT:

NOW THEREFORE, in consideration of the premises and of the promises and conditions hereinafter set forth, the parties hereto agree as follows:

#### ARTICLE 1.

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Survey Print of Rights

Exhibit A-2	Legal Description of Rights
Exhibit B	Railroad's Track & Surface Material Estimate
Exhibit B-1	Railroad's Signal Material Estimate
Exhibit C	Railroad Form of Contractor's Right of Entry Agreement

## ARTICLE 2.

The Railroad, at City's expense, shall furnish all labor, material, equipment and supervision for the Roadway improvements:

- Install automatic flashing light crossing signals with gates; and other signal materials.
- Re-lay 800-feet of rail; Install 136-feet of concrete road crossing panels; Install 274 cross ties; Install 4 carloads of ballast; and other track & surface materials.
- Engineering, and
- Flagging.

## ARTICLE 3.

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 Estimates:

- Track & Surface Estimate dated May 25, 2012, in the amount of \$189,665.00, marked **Exhibit B**,
- Signal Material Estimate dated May 31, 2012, in the amount of \$339,186.00, marked **Exhibit B-1**, and
- Flagging & Engineering Estimate dated October 24, 2011, in the amount of \$65,000.00, marked **Exhibit B-2**,

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 (\$593,851.00).

- 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.

#### ARTICLE 4.

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for 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. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the permitting, design, details or construction of the Roadway.

#### ARTICLE 5.

The Railroad, at its expense, shall maintain the crossing between the track tie ends. If, in the future, the City elects to have the surfacing material between the track tie ends replaced with some surfacing material other than concrete planking, the Railroad, at City's expense, shall install such replacement surfacing.

#### ARTICLE 6.

- A. The City, at its sole cost and expense, shall provide traffic control, barricades, and all detour signing for the crossing work, provide all labor, material and equipment to install concrete or asphalt street approaches, and if required, will install advanced warning signs, and pavement markings in compliance and conformance with the Manual on Uniform Traffic Control Devices.
- B. The City, at its expense, shall maintain and repair all portions of the Roadway approaches that are not within the track tie ends.

#### ARTICLE 7.

If City's contractor(s) is/are performing any work described in Section 4 above, then the City shall require its contractor(s) to execute the Railroad's standard and current form of Contractor's Right of Entry Agreement attached hereto as **Exhibit C**. City acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor(s) of the need to execute the Agreement. Under no circumstances will the City's contractor(s) be allowed onto the Railroad's premises without first executing the Contractor's Right of Entry Agreement.



#### ARTICLE 8.

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 or its contractor(s) 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 number, 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 or its contractor(s). If it is, City or its contractor(s) 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.

#### ARTICLE 9.

The City, for itself and for its successors and assigns, hereby waives any right of assessment against the Railroad, as an adjacent property owner, for any and all improvements made under this agreement.

#### ARTICLE 10.

Covenants herein shall inure to or bind each party's successors and assigns; provided, no right of the City shall be transferred or assigned, either voluntarily or involuntarily, except by express prior written consent of the Railroad.

#### ARTICLE 11.

The City shall, when returning this agreement to the Railroad (signed), cause same to be accompanied by such Order, Resolution, or Ordinance of the governing body of the City, passed and approved as by law prescribed, and duly certified, evidencing the authority of the person executing this agreement on behalf of the City with the power so to do, and which also will certify that funds have been appropriated and are available for the payment of any sums herein agreed to be paid by City.

#### ARTICLE 12.

The Railroad, at its sole cost and expense, shall maintain and repair the public crossing vehicular warning signals and gates; PROVIDED, HOWEVER, that such maintenance and repair shall not negate the Railroad's eligibility for any federal, state, local or other public funds that may become available for the maintenance and repair of the warning devices and gates.

#### ARTICLE 13.

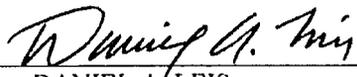
For and in consideration **TWENTY-SEVEN THOUSAND FOUR HUNDRED DOLLARS (\$27,400.00)** to be paid by the City to the Railroad upon the execution and delivery of this Agreement and in further consideration of the City's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the City the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the road crossing over and across the Crossing Area.

**ARTICLE 14. 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 hereto have caused this Supplemental Agreement to be executed as of the day and year first hereinabove written.

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

By:   
DANIEL A. LEIS  
General Director Contracts

WITNESS:

**CITY OF CHANDLER**

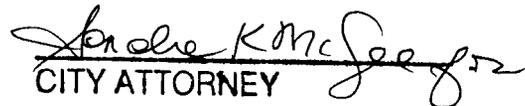
\_\_\_\_\_

By \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

  
CITY ATTORNEY



# UNION PACIFIC RAILROAD CROSSING AT OCOTILLO ROAD MEMO NO. TDA13-012

