

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Lincoln-Lancaster County Railroad Transportation Safety District, hereinafter referred to as "District", Lancaster County, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "County", and the City of Lincoln, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "City".

WHEREAS, the District operates to further the policy of the State of Nebraska to reduce the number of fatalities and injuries caused by collisions between motor vehicles and railroad trains; to eliminate as far as possible unnecessary conflicts between railroad transportation and highway transportation; to improve the movement of both rail and highway traffic by eliminating grade crossings; and to assist in relocation of railroad facilities that bisect the central portions of municipalities, thus hampering the growth of both the municipality and the railroad services; in order to benefit and enhance the community as a whole pursuant to *Neb. Rev. Stat. § 74-1301, et. seq.*; and

WHEREAS, the District, pursuant to *Neb. Rev. Stat. § 74-1302* and *§ 74-1305*, has the right and authority to enter into contracts or other arrangements with municipal corporations making full use of the Interlocal Cooperation Act for, among other things, assistance in the design, construction, maintenance, sale, or lease of the works of the District; making surveys and investigations or reports in relation to the objectives of the District; and cooperating or assisting in obtaining the construction, maintenance, or operation of a work or works of public improvement within the district for the purpose of changing, constructing, eliminating, or reconstructing, including the use of protective devices of any kind or nature, any highway or street crossing of a railroad property; and

WHEREAS, the City proposes to contract for the installation or improvement of street medians at street crossings and/or for the installation of directional horns where required at the BNSF railroad tracks at Park Boulevard, South Street, Pioneers Boulevard, Old Cheney Road, South 14th Street, and Saltillo Road in the City of Lincoln, Nebraska, and Lancaster County, Nebraska, for the purpose of creating a quiet zone as recommended by the Lincoln South Salt Creek BNSF Railway Corridor Quiet Zone Study and the Lincoln South BNSF Railway Corridor Quiet Zone Study, both conducted by the Kirkham Michael Engineering firm and as approved and adopted by the Board of Directors of the District at the regular meeting of the District held on September 11, 2007 (hereinafter the "South Lincoln Quiet Zone Project"); and

WHEREAS, the City, the County, and the District are mutually benefited by including the District's objectives in the South Lincoln Quiet Zone Project.

NOW, THEREFORE, the City, the County, and the District pursuant to the Interlocal Cooperation Act, *Neb. Rev. Stat. § 13-801 et. seq.* do hereby agree as follows:

1. Duration. The duration of this Agreement shall be until the completion of all obligations hereunder, in any event, not to exceed three years from the date of execution of this Agreement.
2. Administration. The terms and conditions of this Agreement shall be administered by the Executive Director of the District, Chairperson of the County Board , and the Mayor of the City. This Agreement does not create any separate legal or administrative entity.
3. Purpose. The purpose of this Agreement is for the District to aid the City and County in funding for the South Lincoln Quiet Zone Project improvements.

4. Budget and Finance. The District has approved the expenditure of \$350,000.00 for the South Lincoln Quiet Zone Project from its July 1, 2008, through June 30, 2009, budget. The District for the year 2008/2009 shall contribute up to the total of such allotted funds to be applied for the South Lincoln Quiet Zone Project improvements. The City and County shall not be responsible for the contribution of any funds for the South Lincoln Quiet Zone Project improvements
5. Duties and Obligations. The District shall be entitled to receive copies of all work financed through this Agreement. The City shall have authority to enter into agreements for the related activities in accordance with the City's contracting requirements. The City will bill and the District will pay the City up to the amount agreed for the District's participation as authorized by this Agreement.
6. Termination. This Agreement may be terminated at any time and for any reason by any party upon written notice of not less than 60 days to the other party. Upon termination, the District shall pay for expenditures incurred up through the date of termination.
7. Ownership. Upon completion of the construction of the Project, the City will assume ownership and maintenance of all the improvements constructed within City Limits, and the County will assume ownership and maintenance of all improvements outside of City Limits.
8. Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County or the District, employees of the County shall not be deemed to be employees of the City or the

District, and employees of the District shall not be deemed to be employees of the City or the County.

9. Assignment. Neither the County, the District, nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this agreement. It is expressly understood and agreed to by the parties that the City may subcontract the installation, construction and improvements provided herein.

10. Construction Area Control. To the extent permitted by law, the County and the District relinquishes control of the construction area to the City and its Contractors during the period of construction. The design, construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the City. This shall include the placement of construction equipment and any obstacles, which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 1997 English Edition of the Standard Specifications of Highway Construction and the Supplemental Specifications dated July 12, 2001, of the State of Nebraska. To the extent permitted by law, the City expressly accepts control of the construction area, such control shall include, but not be limited to, barricades, road crossings, construction equipment and any obstacles created during construction of the project.

11. Hold Harmless. The City agrees to indemnify and hold harmless, to the fullest extent allowed by law, the District and the County and their principals, officers, and employees from and against all claims, demands, suits, actions, payments,

liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the City's principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom.

The County agrees to indemnify and hold harmless, to the fullest extent allowed by law, the City and the District and their principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of the County's principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including any bodily injury, civil rights liability, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom.

The City and the County shall each maintain a policy or policies of insurance (or a self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either the City, the District or the County to indemnify or hold harmless the other parties from liability for the negligent or wrongful acts or omissions of said other parties or their principals, officers, or employees.

12. Subcontractors. The City agrees to require any contractors or subcontractors, providing services under this agreement, to indemnify and hold the District and the County harmless to the same extent and as provided in Section 11, of this Agreement.

13. Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

14. Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the District, the County nor the City shall discriminate against any bidder, employee, applicant for employment, or any other person because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

15. The City further agrees that it shall require its contractors and subcontractors, providing services pursuant to this Agreement, to agree to the following clause by including it in its subcontractor agreements:

Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship, and the Contractor, or any employees or other persons acting on behalf of the Contractor in the performance of this Agreement, shall be deemed to be independent contractor(s) during the entire term of this Agreement or any renewals thereof. It is agreed between the parties that the designated staff shall at all times continue to be employees of the Contractor for the duration of the Agreement. The Contractor shall be responsible for all salary and benefits payable under this Agreement and the Contractor's employees shall not be entitled to any salary from the City, the

District or Lancaster County or to any benefits made to City, District, or Lancaster County employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. The Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance and any applicable malpractice insurance coverage for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to the employee's compensation.

16. The City shall require any contractors and subcontractors, providing services pursuant to this Agreement, to agree to the insurance clause to be used for all City contracts, as provided in Attachment "A" attached hereto and incorporated by this reference.

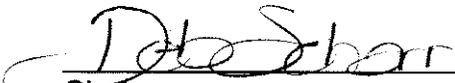
17. The City further agrees that it shall require its contractors and subcontractors, providing services pursuant to this Agreement, to agree to the following clause by including it in its subcontractor agreements:

The Contractor shall not commence work under this Agreement until it has obtained all insurance required pursuant to Attachment "A" and has provided the City, the District and Lancaster County with a Certificate of Insurance showing the specific limits of insurance required by Attachment "A" and showing the City of Lincoln, the District and Lancaster County as an additional insured. Such certificate shall specifically state that Insurance policies are to be endorsed to require the insurer to provide the City of Lincoln, District, and Lancaster County thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance coverage.

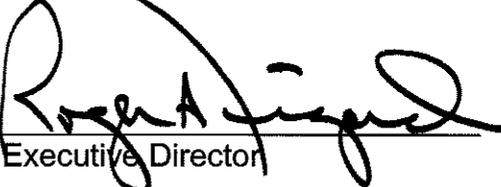
Executed by the DISTRICT this 10th day of March, 2009.

CITY OF LINCOLN LANCASTER COUNTY
RAILROAD TRANSPORTATION SAFETY DISTRICT

Attest:



Chairperson



Executive Director

Executed by the CITY this _____ day of _____, 2009.

Attest:

City Clerk

Chris Beutler, Mayor

Executed by the COUNTY this _____ day of _____, 2009.

Attest:

County Clerk

Lancaster County Board Chairperson

APPROVED AS TO FORM

Lancaster County Attorney