ANNUAL FINANCIAL
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" and the City of Lincoln, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as "City" for the construction of Yankee Hill Road from 70th Street to Hwy 2, hereinafter referred to as "the Project."

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 City contemplates contracting for professional services and construction activities for the Project; 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 political subdivisions 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 and the District are mutually benefitted by the Project.

NOW, THEREFORE, the City 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 one (1) year 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 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 in funding for the Project improvements.
4. Budget and Finance. The District has approved the expenditure of $500,000 for the Project from its July 1, 2016, through June 30, 2017 budget. The District for the year 2016/2017 shall contribute up to the total of such allocated funds to be applied to the Project.
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. Land and Easement Acquisition. The City will acquire or caused to be acquired all necessary easements and right-of-ways for construction of the Project and will use its personnel for the purpose of acquiring such easements and/or rights-of-way and, if necessary, will institute condemnation proceedings using its power of eminent domain to acquire such required easements and/or rights-of-way, to the extent allowed by applicable law.

7. Ownership. Upon completion of the construction of the Project, the City will assume ownership and maintenance of all the improvements constructed with respect to the Project.

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

9. Construction Area Control. 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.

10. Hold Harmless. The City agrees to indemnify and hold harmless, to the fullest extent allowed by law, the District and its 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 City shall 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 or the District 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.

11. Subcontractors. The City agrees to require any contractors or subcontractors, providing services under this agreement, to indemnify and hold the District harmless to the same extent and as provided in Section 10 of this Agreement. 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 or the District or to any benefits made to City or

District 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.

12. Termination. This Agreement may be terminated at any time and for any reason by any party upon written notice of not less than sixty (60) days to the other party. Upon termination, the District shall pay for expenditures incurred up through the date of termination.

13. Assignment. Neither 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.

14. 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.

15. Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the District 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.

Executed by the DISTRICT this 13TH day of SEPTEMBER, 2016.

CITY OF LINCOLN LANCASTER
COUNTY RAILROAD
TRANSPORTATION SAFETY
DISTRICT

Attest:

Chairperson

Executive Director

APPROVED AS TO FORM:

Attorney for RTSD

Executed by the CITY this _____ day of _____, 2016.

Attest:

City Clerk

Chris Beutler, Mayor of Lincoln

APPROVED AS TO FORM:

City Attorney