

CROSSING CLOSURE AGREEMENT

Project No.: NFG-55 (171)

State Control No. 13066

Location: 'J' St Crossings, Lincoln

County: Lancaster

DOT No.: 064339U & 064336Y

R.R.M.P. 60.30 & 60.23

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THIS AGREEMENT made and entered into by and between the City of Lincoln, hereinafter referred to as the "Political Subdivision", BNSF Railway Company, hereinafter referred to as the "Company", and the State of Nebraska, Department of Roads, hereinafter referred to as the "State":

WITNESSETH:

WHEREAS, the State of Nebraska has a special fund known as the Grade Crossing Protection Fund which was established for improvement of the safety of railroad crossings in the State, including the elimination of such crossings, and

WHEREAS, Neb. Rev. Stat. Section 74-1318 (Reissue 1996) provides that when public safety will be improved by elimination of a crossing where a road intersects with a railroad, and the political subdivision involved eliminates the grade crossing by closing the road, such political subdivision shall receive five thousand dollars (\$5,000) plus the actual cost of closure but not to exceed twelve thousand dollars (\$12,000) for a total of seventeen thousand dollars (\$17,000) from the Grade Crossing Protection Fund, and five thousand dollars (\$5,000) from the Railroad involved, and

WHEREAS, the Political Subdivision, in cooperation with the State and the Company, agree to close the public road crossing at the Company tracks located at Railroad Milepost 60.30, DOT. No. 064339U and Railroad Milepost 60.23, DOT. No. 064336Y as shown on attached Exhibit "A".

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1: The Political Subdivision shall attach, as Exhibit C, the plan sheets showing how the signals and crossing will remain in place at DOT No. 064336Y for exclusive use by BNSF personnel and how public access will be restricted.

SECTION 2: The Political Subdivision, after having executed this agreement and after taking all actions necessary, as indicated in the signed resolution as set forth in Exhibit B, to permanently close and vacate the crossing at Railroad Milepost 60.30, DOT. No. 064339U and Railroad Milepost 60.23, DOT. No. 064336Y, will submit to the State of Nebraska, Department of Roads, an itemized statement of all costs involved in this project. This statement should be mailed to the Public Transportation Engineer, Rail & Public Transportation Division, Nebraska Department of Roads, P.O. Box 94759, Lincoln, NE 68509-4759. Also, the Political Subdivision will submit an invoice to the Company for payment of the amount specified in Section 3. This invoice should be mailed to Andy Amparan, BNSF Railway Company, 4515 Kansas Ave., Kansas City, KS 66106.

SECTION 3: The State hereby agrees to pay to the Political Subdivision five thousand dollars (\$5,000) for each of the closed crossing in accordance with Neb. Rev. Stat. Section 74-1318 (Reissue 1996). In addition to the five thousand dollars (\$5,000) at DOT No. 064339U and five thousand dollars (\$5,000) at DOT No. 064336Y, the State will provide up to an additional twelve thousand dollars (\$12,000) to the Political Subdivision towards the costs associated with each closure upon receipt and audit.

SECTION 4: The Company hereby agrees to pay to the Political Subdivision the sum of five thousand dollars (\$5,000) for each closure of the above named crossing.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper Officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the Political Subdivision this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST: CITY OF LINCOLN

\_\_\_\_\_ By: \_\_\_\_\_

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

EXECUTED by the Company this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST: BNSF RAILWAY COMPANY

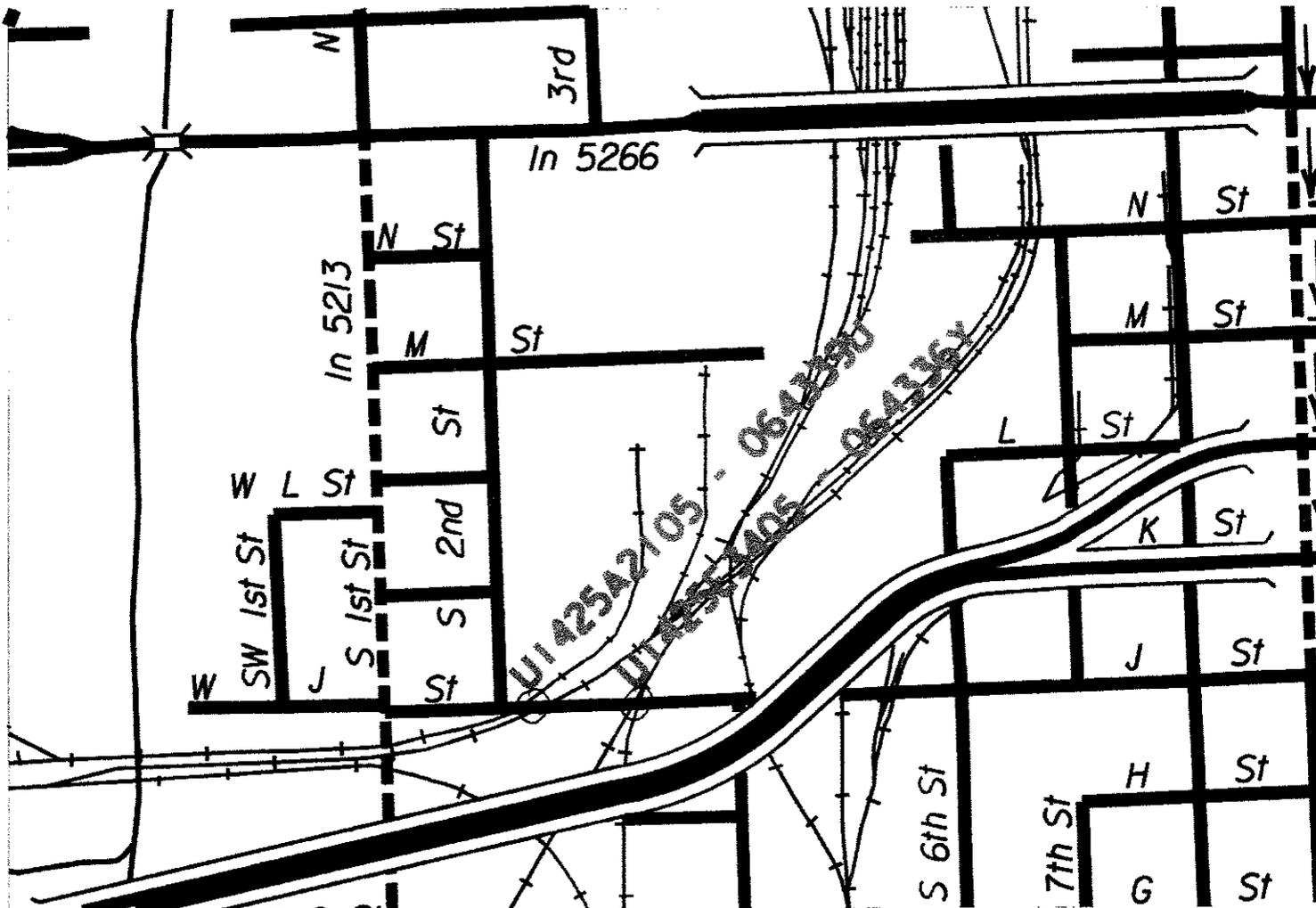
\_\_\_\_\_ By: \_\_\_\_\_

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

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST STATE OF NEBRASKA  
DEPARTMENT OF ROADS

\_\_\_\_\_ Rail and Public Transportation Engineer



BNSF Closures City of Lincoln 5/5/2009 8:54:21 AM

**EXHIBIT A**

09R-44

Introduce: 3-23-09

RESOLUTION NO. A- 85270

1 WHEREAS, the Interlocal Cooperation Act, *Neb. Rev. Stat. § 13-801, et seq.*,  
2 permits local government units to cooperate with other such units to make the most efficient  
3 use of their powers on the basis of mutual advantage; and

4 WHEREAS, the City of Lincoln, Nebraska (City) and the Lincoln/Lancaster County  
5 Railroad Transportation Safety District (District) desire to cooperate in the design and  
6 construction activities for the railroad-roadway crossing safety improvements and/or  
7 installation of directional horns where required at existing railroad crossings at 1st & J and  
8 3rd & D Streets, and the closure of crossings at 2nd & J and 3rd & J Streets for the purpose  
9 of establishing a Quiet Zone at those locations in the City (herein the "South Salt Creek  
10 Quiet Zone Project").

11 WHEREAS, the District agrees to fund the required improvements and installation  
12 for the South Salt Creek Quiet Zone Project and has budgeted and authorized the  
13 expenditure of funds for such project.

14 WHEREAS, the District will pay the City \$250,000 to be applied to said project; and  
15 the City will bill the District \$250,000 as expenditures are incurred by the City for such work.

16 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln,  
17 Nebraska:

18 That the Interlocal Agreement between the City and the District attached hereto as  
19 Attachment "A" in connection with the South Salt Creek Quiet Zone Project in Lincoln,

1 Lancaster County, Nebraska, is hereby approved and the Mayor is authorized to execute  
2 said agreement on behalf of the City.

Introduced by:

Jonathan Cook

AYES: Cook, Emery, Marvin,  
Spatz, Svoboda;  
NAYS: Eschliman;  
ABSENT: Camp.

Approved as to Form & Legality:

John V. Hordley  
City Attorney

Approved this 1<sup>st</sup> day of April, 2009  
Chris B...  
Mayor

**ADOPTED**

**MAR 30 2009**

**BY CITY COUNCIL**

## 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".

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 on S. 1<sup>st</sup> Street and on D Street in the City of Lincoln, Nebraska, and closure of the public street crossings on S. 2<sup>nd</sup> Street and on J Street, 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 (hereinafter the "South Salt Creek Quiet Zone Project"); and

**EXHIBIT B**

WHEREAS, the City and the District are mutually benefited by including the District's objectives in the South Salt Creek Quiet Zone 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 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 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 South Salt Creek Quiet Zone Project improvements.
4. Budget and Finance. The proposed District budget for 2009-2010 has \$250,000.00 for the South Salt Creek Quiet Zone Project. The District for the year 2009/2010 shall contribute up to the total of such allotted funds to be applied for the South Salt Creek Quiet Zone Project improvements. The City shall not be responsible for the contribution of any funds for the South Salt Creek 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.

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

CITY OF LINCOLN LANCASTER COUNTY  
RAILROAD TRANSPORTATION SAFETY DISTRICT

Attest:

*Dee Star*  
Chairperson

*Roger A. [unclear]*  
Executive Director

Executed by the CITY this 1st day of April, 2009.

Attest:

*Jean E. Ross*  
City Clerk



*Chris Beutler*  
Chris Beutler, Mayor