

## AGREEMENT

CITY OF LINCOLN  
BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY

THIS AGREEMENT, entered into between the City of Lincoln, Nebraska, hereinafter referred to as the "City" and the Burlington Northern and Santa Fe Railway Company, a Delaware Corporation, hereinafter referred to as the "Railroad".

WITNESSETH:

WHEREAS, it has been determined between the City and the Railroad that a proposed viaduct over said Railroad's tracks at SW 40<sup>th</sup> Street, DOT 070128L, in Lincoln is feasible, and

WHEREAS, The City is agreeable to permanently closing and removing the current at-grade crossing at SW 40<sup>th</sup> Street in Lincoln in connection with the proposed Viaduct.

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

SECTION 1. The current cost estimate for the entire proposed SW 40<sup>th</sup> Street viaduct project from "O" Street to "A" Street is as follows:

Overpass and Roadway	\$12,050,000
Right-of-Way	\$ 455,000
Utilities	\$ 650,000
Final Design/Construction Engineering	\$ 3,175,000
Removal of at-grade crossings	\$ <u>70,000</u>
Total	\$16,400,000

All preliminary engineering costs for the proposed project will be the responsibility of the City.

The Railroad will pay the City a lump sum of \$500,000, payable \$100,000 upon the permanent closure and removal of the existing S.W. 40<sup>th</sup> Street at grade railroad crossing, DOT 070128L, and \$400,000 upon the completion of all of the following, to wit: (1) the vacation of S.W. 40<sup>th</sup> Street from the south right-of-way line of West 'M' Street to the north right-of-way line of Entrance Street; (2) the transfer to the Railroad of one-half of the vacated S.W. 40<sup>th</sup> Street right-of-way at those locations where the Railroad owns abutting property; and (3) the execution by the City and Railroad of a

construction and maintenance contract for the proposed theoretical grade separation in S.W. 40<sup>th</sup> Street.

The current construction cost estimate for the theoretical 44-foot viaduct, with a sidewalk/bikeway on one side, from touch down to touch down, is as follows:

Overpass and Roadway	\$ 6,607,000
Right-of-Way	\$ 400,000
Utilities	\$ 650,000
Removal of crossings	\$ 70,000
Construction Engineering	<u>\$ 835,000</u>
Total	\$ 8,562,000

Any costs above and beyond those described above will be the responsibility of the City and RTSD. A Supplemental Agreement (see Section 3) will be completed for scope of work, Railroad obligations, agency obligations, and joint obligations, following detailed design.

SECTION 2. The City agrees to take all action necessary to permanently close the public at-grade crossing located in Lincoln/ Lancaster County at SW 40<sup>th</sup> Street. The SW 40<sup>th</sup> Street crossing will be permanently closed at the start of construction of the proposed viaduct, or within 60 calendar days following written notice from the Railroad demonstrating they have a fully funded expansion project ready for construction, that includes signal or other work that would require the temporary closure of S.W. 40<sup>th</sup> Street to perform the construction activity, whichever comes first.

SECTION 3. The construction of a grade separation structure will be by separate construction and maintenance agreement. The Railroad agrees, as part of the consideration for the construction and maintenance agreement, to grant to the City, its successors and assigns, easements for the property rights to construct the proposed viaduct, and, thereafter, maintain the proposed viaduct, including any public or private utilities unless covered under a separate agreement with the Railroad, whose relocation is necessitated by the project. The Railroad agrees to waive any fees for such easements. In exchange, the City, at its own cost and expense, will provide and place all barricades, lights, flag men, or traffic control devices deemed necessary by the City to permanently close S.W. 40<sup>th</sup> Street.

SECTION 4. The Railroad is responsible for the removal of the crossing surfaces and flashing light signals and gates currently in place at S.W. 40<sup>th</sup> Street. The flashing light signals and gates will be delivered to a storage location to be determined by the City. The future disposition of the signals will be jointly determined by the City and the Railroad. In exchange, the City will pay the Railroad their actual cost to remove the

crossings up to a maximum of \$70,000 which the Railroad may deduct from its \$100,000 contribution.

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 City this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

CITY OF LINCOLN

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EXECUTED by the Railroad this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:

BURLINGTON NORTHERN AND  
SANTA FE RAILWAY

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