

## AGREEMENT

### CONSTRUCTION OF HIGHWAY GRADE SEPARATION UNION PACIFIC RAILROAD COMPANY LEXINGTON, NEBRASKA

This Agreement (Agreement) is made and entered into as of the effective date herein defined by and between the City of Lexington, Nebraska (City) in Dawson County and Union Pacific Railroad Company, a Delaware Corporation ("Railroad") and the State of Nebraska, Department of Roads ("State"). State, City and Railroad are hereinafter sometimes referred to collectively as the "Parties".

#### RECITALS

- A. The City of Lexington, Dawson County and the Dawson County Railroad Transportation Safety District have executed a local Cooperative Agreement designating the City of Lexington as the Lead Agency for the Lexington East Viaduct Study. The three local agencies will hereinafter be referred to as the "City". The local cooperative agreement is attached hereto and designated as **Exhibit "B"**.
- B. The City has plans for the construction of a highway grade separation (Overpass) project over the Railroad's tracks on the Kansas City Service Unit, Kearney Subdivision in Dawson County, Nebraska in the vicinity of County Road 435 at Railroad Milepost 222.58 at DOT 816901E. The location of the Overpass is shown on the location map marked **Exhibit "A"**, attached hereto and made a part hereof.
- C. In connection with construction of the Overpass the following existing public at-grade crossings, as approved by Dawson County in the local cooperative agreement, will be permanently closed and removed:
  1. County Road 435 Railroad Milepost 222.58, DOT No. 816901E.
  2. County Road 436 Railroad Milepost 221.55, DOT No. 816902L.
- D. The location of the county road closures is also shown on **Exhibit "A"**.
- E. The Parties are agreeable to provide funding for the Overpass project including preliminary engineering, right of way acquisition, utilities, construction engineering and construction of said Overpass for eligible project costs as detailed under project phasing and project funding.

## **AGREEMENT**

**NOW, THEREFORE,** It is mutually agreed to by and between the Parties hereto as follows:

### **Section 1. Lexington East Overpass Project Phasing**

1.1 Subject to the provisions of Section 5, the Lexington East Overpass will be placed in the State's program after completion of final construction plans and availability of Federal and/or State rail safety funding. The project will also include the closure of the County Road 435 and County Road 436 at-grade rail-highway grade crossings.

1.2 Subject to the provisions of Section 5, the State shall prepare a construction and maintenance agreement among the Parties covering all the Lexington East Overpass project work with such agreement providing for:

- 1.2.1 The County Road 435 and County Road 436 closures to occur upon completion of the Lexington East Overpass project and;
- 1.2.2 The Lexington East Overpass is open to traffic.

### **Section 2. Estimated Project Construction Costs and Funding Apportionment**

2.1 At the present time a final alternative has not been selected. Estimated construction costs for the alternatives being considered are \$7,000,000 to \$8,000,000. The funding share for each party for eligible costs based on the preliminary estimated costs is as follows:

Lexington East viaduct Project = \$7,000,000 to \$8,000,000

State Share	= 90%	= \$6,300,000 to \$7,200,000
County Share	= 5%	= \$350,000 to \$400,000
Railroad Share	= 5%	= \$350,000 to \$400,000

2.2 After selection of a final alternative and prior to execution of the construction and maintenance agreement for the project, the City and State will update the estimates described in Section 2.1 to provide current project estimates and provide copies of the detailed estimate to the Railroad. The Railroad shall have the opportunity to review and approve the updated estimates. At such time the State shall calculate and

provide to the Railroad and County the cap for the project of State and/or Federal Rail Safety funds and Railroad funds, **i.e.**, the amount of actual costs incurred by the Parties under the project that, when such amount is exceeded, all actual costs exceeding such cap amount shall be borne one hundred (100%) by the City (cap amount). The State and Railroad shall confer and agree on the cap amount utilized in the construction and maintenance agreement. Based on current estimates, a cap of \$7,500,000 of State and/or Federal Rail Safety funds would be placed on the project.

2.3 The construction and maintenance agreement for the project shall detail the allowable cost for the project; detail the funding share for all the Parties, billing procedure for the City and Railroad and the ownership of the structure including all maintenance details and responsibilities.

2.4 Actual costs incurred by the Railroad to be apportioned among the Parties as set forth in this Section shall include, without limitation, all actual costs of engineering and design review, removal, construction inspection, flagging, procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead and labor costs and including Railroad's then standard labor additive.

### **Section 3. Work Responsibilities and/or Obligations of Parties for the Project**

The State, City and Railroad with project costs apportioned among the Parties as set forth in Section 2 shall perform the following work and/or have the following obligations:

3.1 The State shall

3.1.1 Prepare the construction and maintenance agreement that will describe in detail all the work and responsibilities of the Parties and project scheduling.

3.1.2 Subject to the provisions of Section 5, the State will schedule and let to contract the project. The contractor will complete construction unless certain items are to be performed by the City or Railroad. Due to the uncertainty of State and Federal Rail Safety funding no specific time frame for placing the project in the State's program can be set at this time.

3.2 The Railroad shall

3.2.1 Perform its portion of the crossing closures work as set forth in Section 4.

3.2.2 Perform all flagging, preliminary engineering, design review, inspection and any other work such as, but not limited to, relocating signal lines or other Railroad owned facilities.

3.3 The City shall perform or have their consultant perform the following:

3.3.1 Develop and prepare, or cause to be developed and prepared, all preliminary and final design detailed plans and specifications including cost estimates for the Overpass and street closures. The City shall submit such items to the State's Engineer and Railroad's Assistant Vice President Engineering Design (or his/her authorized representative) for their prior review and approval. Said plans shall be approved by the State and Railroad prior to execution of the construction and maintenance agreement for the project. Said plans shall include, without limitation, shoring, sheeting and excavation for bents and/or abutments adjacent to Railroad's tracks and, if applicable, all demolition and removal plans for existing structures. Plans shall include all utility adjustments, reinforcements or relocations including, without limitation, work that will affect existing fiber optic lines and facilities. The Parties agree the Overpass project plans must be approved by the State and Railroad prior to execution of the construction and maintenance agreement. The Parties agree the City shall bear initially all costs associated with the work described in this subsection (A) but that such costs shall be later apportioned among the Parties as set forth in Section 2 upon the start of the project.

3.3.2 The City shall provide construction inspection.

3.3.3 The City shall perform its portion of the street closures as set forth in Section 4.

3.4 The City, at its sole cost with such costs not to be apportioned among the Parties, shall perform the following work and/or have the following obligations:

3.4.1 The City shall prepare, or cause to be prepared, and submit to the Railroad for its review and written approval, surveys and legal descriptions of the portions of Railroad's property needed for temporary construction purposes or as permanent easements.

3.4.2 The City shall be responsible for paying the Railroad the fair market value of the temporary and permanent easement use areas that are needed from the Railroad for the Overpass Structure as mutually agreed upon by the City and Railroad or as determined by a court

having proper jurisdiction. The City shall pay such consideration to Railroad simultaneously with the execution of the construction and maintenance agreement.

- 3.4.3 The activities by the City in Section "A" and "B" above shall be included in the overall project cost with such cost to be apportioned among the Parties based on funding for the project.

#### **Section 4. Street Closures**

Under the Overpass project, and as a project cost to be apportioned among the Parties as set forth in Section 2, the Street closures shall include, without limitation the following:

- 4.1 The Railroad shall provide flagging protection, preliminary engineering, design review and removal of the rail, ties and rail signal equipment and shall retain all salvage and salvage credits resulting from such removal.
- 4.2 The City shall provide traffic control including, without limitation, advance warning signs, pavement markings and barricades in compliance with the then-current requirements contained in the Manual on Uniform Traffic Control Devices, or any such successor publication.
- 4.3 The City shall remove the approaches to each crossing, design the new approach treatment and complete the approach treatment including any street and approach resurfacing and construction of barricades.

#### **Section 5. Conditions Precedent to Commencement of the Overpass Project**

Notwithstanding all other obligations set forth in this Agreement, before work can commence on the project, the following conditions precedent shall have first occurred for the project.

- 5.1 The State, City and Railroad shall have indicated in writing to the other Parties that sufficient Federal and/or State, City and Railroad funding for the project is available and has been allocated for the project.
- 5.2 The State shall indicate in writing to the City and Railroad that the State has obtained all necessary approvals in scheduling the project for the fiscal year it is scheduled in.
- 5.3 The Parties have executed the construction and maintenance agreement for the project.

5.4 The Railroad has provided written approval to the State and City of the final one hundred percent (100%) completed plans for the Overpass and street closures.

5.5 The City and Railroad have agreed upon the amount of consideration to be paid by the City to Railroad for the Overpass project for the permanent and temporary easements that are needed from the Railroad.

5.6 Each contractor hired by the City to perform any project work has agreed to the indemnification and insurance clauses related to work on **Union Pacific Railroad's Property** included in the bid specifications and detailed in the construction and maintenance agreement.

#### **Section 6. Conflict of Provisions Contained in Agreements**

If there is a conflict of terms involving this Agreement and the construction and maintenance agreement for the project, the terms and conditions of the construction and maintenance agreement shall govern.

#### **Section 7. Effective Date**

The effective date of this agreement shall be the date of execution of the State as shown on the execution page of this Agreement.

#### **Section 8. Assignment**

None of the Parties may assign this Agreement without prior written consent of the other two non-assigning Parties.

**Section 9. Successors and Assigns**

Subject to the provisions of Section 8, this Agreement shall be binding upon and inure to the benefits of the Parties hereto and their respective successors and assigns.

EXECUTED by the City this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Attest: City of Lexington, Nebraska

\_\_\_\_\_  
City Clerk By \_\_\_\_\_  
Mayor, City of Lexington

EXECUTED by Railroad this \_\_\_\_\_ day of \_\_\_\_\_, 2010

Attest: Union Pacific Railroad

\_\_\_\_\_  
Assistant Secretary By \_\_\_\_\_

EXECUTED by the State this \_\_\_\_\_ day of \_\_\_\_\_, 2010

State of Nebraska, Department of Roads

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

Acknowledgement

STATE OF NEBRASKA )  
) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
by Ellis Tompkins, Rail and Public Transportation Engineer for the State of Nebraska,  
Department of Roads.

\_\_\_\_\_  
Notary Public

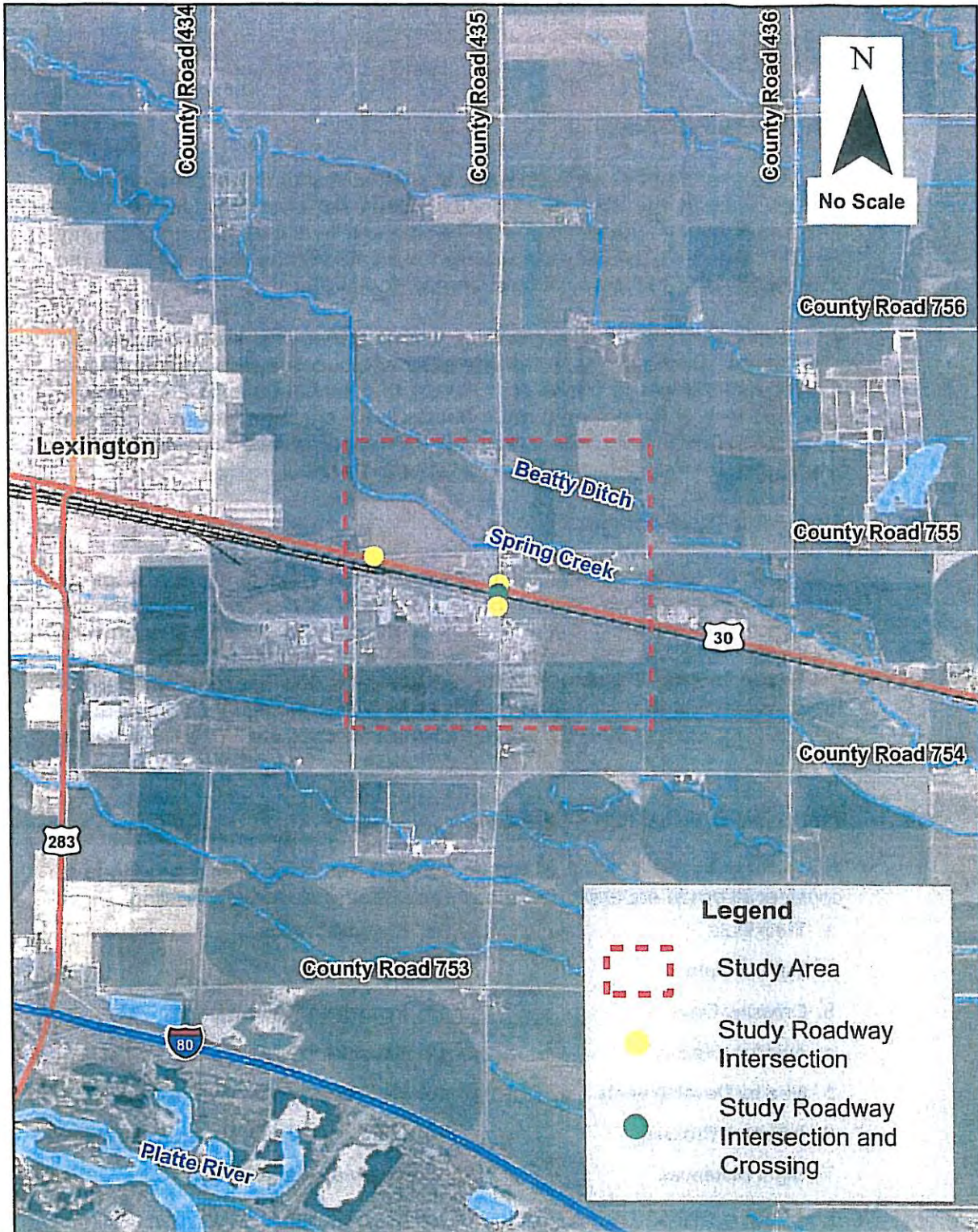


Figure 1  
Project Location



## EAST LEXINGTON VIADUCT COOPERATIVE AGREEMENT

This Agreement entered into on September 1, 2010, by and between the City of Lexington, Nebraska, (hereinafter "CITY"), the COUNTY OF DAWSON, State of Nebraska, (hereinafter "COUNTY"), and the Dawson County Railroad Transportation Safety District, Dawson County, Nebraska, (hereinafter "RTSD").

WHEREAS, CITY is a Nebraska Municipal corporation, COUNTY is a body politic and corporate established under Chapter 23 of the Nebraska Revised Statutes, and RTSD is a special district formed under Section 74-1302 of the Nebraska Revised Statutes;

WHEREAS, CITY and COUNTY are responsible for operation and maintenance of streets and highways which are interconnected in the Lexington, Nebraska area, and RTSD is responsible for railroad transportation safety in such area; and

WHEREAS, the at-grade crossing of Road 435 and the Union Pacific Railroad serves property and businesses within the municipal limits of CITY, as well as property and businesses within the jurisdiction of COUNTY, and that joint planning to facilitate removal of the conflict between railroad transportation and highway transportation and elimination of at-grade railroad crossings will be conducive to the public health, safety, and welfare, and the future development of the area in a responsible and orderly manner; and

WHEREAS, CITY and COUNTY have by a previous Cooperative Agreement dated June 12, 2007, provided for the funding and completion of a Rural Viaduct Location Study, which is now completed.

THEREFORE, in consideration of the mutual covenants of the parties, it is agreed as follows:

1. Cooperative Agreement: Pursuant to Sections 13-801 - 13-827 of the Revised Statutes of Nebraska, "CITY", "COUNTY", AND "RTSD" hereby enter into a cooperative agreement through which the parties shall jointly and cooperatively exercise certain powers, privileges, or authority granted to the parties for the study, design, funding, construction, maintenance, and traffic regulation of transportation facilities within a one mile radius of the at-grade intersection of County Road 435 and the Union Pacific Railroad. The governing body of each of the parties hereto shall have approved this Agreement by resolution, prior to its execution and delivery.

2. Purpose: The purpose of the Cooperative Agreement shall be to make efficient use of the powers of the parties hereto by enabling them to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner in pursuant to forms of governmental organization that will accord best with economic and other needs of the public as served by CITY, COUNTY, and RTSD, and more specifically to facilitate planning and construction of an East Lexington Viaduct.

3. Organization: The Lexington City Manager is hereby designated as the Administrator of this Agreement with the responsibility for carrying out the terms of this Agreement. The Administrator shall report regularly to the governing bodies of CITY, COUNTY, and RTSD, to keep all parties advised of joint and cooperative activity. This Agreement does not create any separate legal or administrative entity.

4. Duration: The duration of this Agreement shall be until the completion of all obligations hereunder, in any event, not to exceed twenty years from the date of the execution of this Agreement.

5. Manner of Acquiring and Holding Property: Any real or personal property owned by any of the parties to this Agreement shall remain the separate property of the parties. Any property acquired for the purposes of this Agreement shall be allocated subject to Section 6 of this agreement.

6. East Lexington Viaduct Project: The parties agree that pursuant to the findings of the Rural Viaduct Location Study, the parties shall take the necessary steps to secure local, state, federal, and railroad funding for preliminary design, environmental assessments, final design/specification, construction, and construction management of a viaduct over the Highway 30 and Union Pacific Railroad rights-of-way within a one mile radius of the current at-grade crossing at County Road 435, (PROJECT) subject to the following:

- a) CITY shall be the responsible entity for negotiating and signing program/funding agreements with the State of Nebraska Department of Roads and Union Pacific Railroad through the course of planning and construction of PROJECT;
- b) COUNTY agrees that the at-grade crossings at Union Pacific DOT 816901E at County Road 435 and at Union Pacific DOT 816902L at County Road 436 shall be closed as a condition of PROJECT funding, such closures to take place at the completion of construction of PROJECT;
- c) CITY will provide a Responsible Charge person for PROJECT;
- d) CITY will provide and pay the cost of all preliminary design and environmental assessment for the PROJECT, and will provide oversight of the same;

- e) RTSD will reimburse CITY the actual costs associated with Section 6(d).
- f) CITY will provide and pay any matching costs which are part of the funding of PROJECT construction and construction management;
- g) RTSD will reimburse CITY the actual costs associated with Section 6(f).
- h) All PROJECT bridges and roadways shall become a part of COUNTY road system;
- i) CITY and COUNTY shall be responsible for ongoing maintenance of roadways and bridges with PROJECT, per separate cooperative agreement.
- j) COUNTY shall be responsible for traffic control regulations, signing and enforcement within the PROJECT;


7. Amendment of Agreement: This Agreement may be amended upon approving resolutions adopted by all governing bodies of CITY, COUNTY, and RTSD.

Executed and delivered this 1<sup>st</sup> day of September, 2010

CITY OF LEXINGTON, NEBRASKA

By: 

COUNTY OF DAWSON

By: 

DAWSON COUNTY RAILROAD SAFETY  
TRANSPORTATION DISTRICT

By: 

<b>Permanent Salaries</b>	
4111 PERMANENT SALARIES & WAGES	799,481
<b>Employee Benefits</b>	
4131 RETIREMENT	59,961
4132 OASDI EXPENSE (FICA)	64,650
4134 GROUP LIFE & ACCIDENT INSURANCE	365
4135 GROUP HEALTH INSURANCE	172,800
<b>Rentals</b>	
4242 RENT OF BUILDINGS	2,000
<b>Repairs &amp; Maintenance</b>	
4275 REPAIR & MAINT-COMMUNICATION EQUIP.	150
<b>Engineering Contracts</b>	
4412 ENGINEERING & ARCHITECTURAL CONTRACTS	20,000
<b>Contractual Services</b>	
4414 EDUCATIONAL PROFESSIONAL SERVICES	1,500
4421 OTHER CONTRACTURAL SERVICES EXP	58,500
<b>Other Operating Expenses</b>	
4219 AWARDS EXPENSE	246
4221 DUES, SUBSCRIPTIONS, FEES & AWARD	16,000
4222 CONFERENCE REGISTRATION EXPENSE	2,550
<b>Supplies &amp; Materials</b>	
4311 OFFICE, DP, & REPRODUCTION	11,100
4331 HOUSEHOLD & INSTITUTIONAL	50
4339 FOOD EXPENSE	1,700
<b>In State Travel</b>	
4713 IN-STATE TRAVEL BOARD/LODGING/MEALS	7,069
4733 IN-STATE TRAVEL STATE OWNED AIRPLANE EXP	500
4743 IN-STATE TRAVEL PERSONAL VEH MILE EXP	500
<b>Out of State Travel</b>	
4712 OUT-OF-STATE TRAVEL BOARD/LODGING/MEALS	2,800
4722 OUT-OF-STATE TRAVEL COMMERCIAL FARES	750
4756 OUT-OF-STATE MISCELLANEOUS TRAVEL EXPENS	450
<b>IT Hardware / Software</b>	
4856 DATA PROCESSING EQUIP-HARDWARE>=\$1,500	5,200
<b>Redistribution</b>	
4751 EQUIPMENT RENTAL	10,500
<b>250 RAIL AND PUBLIC TRANSIT DIVISION Total</b>	<b>\$ 1,238,822</b>