

**AGREEMENT REGARDING QUIET
ZONE WARNING DEVICES**

This Agreement regarding Quiet Zone Warning Devices (hereinafter, "Agreement"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, is made and entered into this _____ day of _____, 2008, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter, the "Railroad") and the [name of Public Authority], a _____ of the State of _____ (hereinafter, the "Public Authority").

NOW, THEREFORE, in consideration of the premises and of the mutual promises and conditions herein set forth, the parties agree as follows:

1. The Devices, the Projects and the Work.

The Public Authority has requested that the Railroad, at Public Authority's cost incur pre-estimate costs, prepare estimates for construction of, and engineer, design, construct, install, and thereafter operate and maintain the warning devices described more fully below (hereinafter referred to as the "Devices") at the railroad crossings on the _____ Subdivision, at the locations shown in Exhibit 1 hereto. The Devices which are the subject of this Agreement are being constructed and installed, at least in part, in furtherance of the Public Authority's creation or use of a Quiet Zone in accordance with 49 CFR Part 222. The project to construct and install the Devices is called the "Project." Hereinafter, any of the Railroad's work (whether performed by it directly or by others it contracts with) associated with the pre-estimate work, preparation of estimates, engineering, design, construction, installation, operation or maintenance of or concerning the Devices or any part thereof is called the "Work." The

Railroad is agreeable to the Public Authority's request, subject to the terms and conditions of this Agreement.

2. The Public Authority's Sole Financial Responsibility for the Devices, the Project, and the Work.

a. Financial Obligation of Public Authority. The Public Authority shall be solely financial responsible, without limitation, for all costs and expenses for all labor, supplies, materials, and capital costs incurred for or in connection with the Railroad's preparation of estimates, engineering, design, construction, installation, operation, maintenance, and replacement in connection with the Devices, the Project, and the Work, for all costs and expenses for flagging and traffic control provided by the Railroad, and for all other costs and expenses whatsoever associated with the Devices, the Project, and the Work, or that are required to facilitate, implement, maintain, and operate the Devices, including without limitation as set out more fully below. These costs and expenses include, without limitation, procurement costs for materials, manpower costs, including supervision (with direct and indirect labor additives), delivery charges, and Railroad's additives and overhead, as such are in effect on the date the Railroad prepares its estimates and billings. Hereinafter, the above costs and expenses are referred to as "Costs." "Devices" and "Project" as used herein are described more fully in Exhibit 2 hereto.

[Exhibit 2 will identify with specificity the SSMs and Devices, where they are located, etc. and also specify in general terms the Work to be performed]

b. Payment and Reimbursement Obligations of the Public Authority.

The Public Authority shall pay the Railroad for and fully reimburse the Railroad for, and shall be responsible for, any and all Costs incurred by the Railroad in connection with the Devices, the Project, and the Work, including without limitation as set out more fully elsewhere herein.

3. Payment for all Project Costs and Expenses Incurred, Through Construction and Testing of the Devices.

a. Payment by the Public Authority for Estimated Construction Costs.

(1) The Public Authority shall fully fund, pay for, and be responsible for all Costs related to pre-estimate costs, the preparation of estimates for, and all Costs for the engineering, design, installation, construction, and testing of the Devices, including without limitation the actual Costs incurred by Railroad for all labor and materials to be supplied by Railroad for these purposes.

(2) The Public Authority has paid Railroad certain funds to compensate Railroad, at least in part, for certain pre-estimate Costs incurred by Railroad, preparation of estimates, and preliminary engineering work. Public Authority, upon execution of this Agreement, shall pay Railroad the amount set out in Exhibit 3 for the remaining unpaid amounts owed to Railroad for such services, if any.

(3) The Public Authority, upon execution of this Agreement, shall pay Railroad in advance, the total initial estimated Costs of the supplies and materials to be supplied for the Project, through construction and testing (as set out in the estimates contained in Exhibit 4 hereto). While Railroad has no obligation to, if the Railroad from time to time should choose to update and recalculate its estimated Costs for supplies and materials, the Public Authority will pay the updated estimate within thirty (30) days after receipt. In any event, and whether or not Railroad has updated and recalculated its estimated Cost of supplies and materials, the Public Authority will pay all invoices submitted by Railroad for supplies and materials that are in excess of the initial estimate set out in Exhibit 4, within thirty (30) days of receipt of such invoices.

(4) The Public Authority, no later than ninety (90) days prior to the start date of construction, shall pay the Railroad the total estimated Costs of the labor for the Project, as set out in the estimates contained in Exhibit 4 hereto. While Railroad has no obligation to, if Railroad from time to time should choose to update and recalculate its estimated Costs of labor, the Public Authority will pay the updated estimate within thirty (30) days after receipt. In any event, and whether or not Railroad has updated and recalculated its estimated Cost of labor, the Public Authority will pay all invoices for labor that are in excess of the initial estimate set out in Exhibit 4, within thirty (30) days of receipt of such invoices

(5) The Public Authority recognizes that the estimates referred to herein are only estimates and that the actual Cost probably will vary, depending, among other things, on site conditions, labor and materials, costs, and other conditions which are both within and outside the control of Railroad. Railroad is not required to provide updated estimates. To the extent it chooses to do so, however, such estimates need not be in any particular format. Whether updated estimates are prepared or not, the Public Authority remains responsible for payment of all Costs.

b. Railroad's Estimates. Railroad's Estimates of Material and Force Account Work, prints of the crossings showing the proposed Work, and other information showing the details of the Devices and the Project are attached hereto as Exhibits 4.

c. Total Project Cost. Reasonably soon after Project completion Railroad will calculate and bill Public Authority for final Project Cost to be paid by the Public Authority hereunder . Public Authority shall pay in full the final Cost, to the extent not previously paid based on estimates, within thirty (30) days after Railroad submits its billings.

4. Public Authority's Payment for All Operation and Maintenance Costs.

The Public Authority shall pay Railroad's incremental Costs for operation and maintenance of the Devices and all Work associated therewith or related to the Devices, which are in excess of the Railroad's current operation and maintenance Costs for the existing equipment at each Project crossing, to be calculated as follows. The estimated annual incremental Cost the Railroad will incur relative to each crossing is shown in Exhibit 5 hereto. That estimate is based, in part, on the signal unit base. The annual incremental Cost also is based on the number of current signals at each crossing. The total of the Ex. 5 estimates hereinafter is called the Annual Fee. Effective on the first anniversary of this Agreement, and on each subsequent anniversary date thereafter, the Annual Fee will be increased at a rate based on the Association of American Railroad's (AAR/AREMA) signal unit cost index. Such changes in the Annual Fee may be made by Railroad by means of an automatic adjustment in billing. Moreover, Railroad may redetermine the signal unit base at any time subsequent to the expiration of five (5) years following the date on which the Annual Fee was last determined or established, such redetermination to be taken into account in determining the succeeding Annual Fees.

5. Payment for all Replacement Costs.

The Public Authority shall be responsible for all Costs for repair or replacement of all or any part of the Devices, whether or not such are considered to be part of the maintenance costs referred to in Section 4, but including also without limitation any repair or replacement of all or any part of the Devices necessary as a result of any cause, defect, obsolescence, or other events.

6. Payment for Relocation Costs.

Public Authority shall be responsible for all costs and expenses associated with or resulting from any relocation of the Devices, including without limitation such relocation work that results from track alignment changes, new track constructions, signal upgrades, or from any work implemented in the discretion of the Railroad, or resulting from the Railroad's business needs or the requirements of an administrative agency. The Railroad shall provide a reasonable prior notification of such relocation work.

7. Other Responsibilities and Obligations of the Public Authority With Respect to the Work and the Devices.

a. **Cooperation by the Public Authority.** The Public Authority shall assist the Railroad as required to troubleshoot and correct any malfunction of any part of the Devices, including without limitation by dispatching Public Authority's street maintenance personnel to provide Railroad maintenance personnel access to Public Authority streets for the purpose of correcting, e.g., any malfunctions in the loops, circuits or equipment.

b. **Necessary Approvals.** The Public Authority will grant, apply for, and obtain in advance all easements, permits, licenses, rights-of-way, permissions, approvals, and authorizations, including without limitation, any and all from local, state, and federal authorities for the Project, the Devices, and all Work referred to herein, that are required by Railroad or that otherwise are necessary or required. The Public Authority shall provide copies of all such approvals and authorizations to the Railroad before Railroad begins work on the Project. The Public Authority shall cooperate with Railroad to the extent Railroad obtains such approvals or authorizations.

c. **Prevention of Interference with Devices.** The Public Authority shall prevent interference with the operations and functions of the Devices that are the subject of this Agreement resulting from any other Public Authority facilities.

8. **The Railroad's Work.**

a. **Design and Testing.** The Railroad will prepare all designs, including plans and specifications, and labor and material estimates as required in Section 3b. above, and will perform all necessary construction and acceptance testing services, for the Devices to be installed by Railroad as part of the Project, at the Public Authority's sole cost and expense.

b. **Railroad's Construction.** The Railroad will construct and install the Devices, at the Public Authority's sole cost and expense.

c. **Modifications of Existing Equipment.** Railroad will make the necessary modifications to the existing grade crossing warning equipment and control circuits and other equipment on the Railroad's right-of-way in order to accommodate the Project and the Work, at the Public Authority's sole cost and expense.

d. **Flagging.** The Railroad will provide trained Railroad flaggers, when required by Railroad right-of-way access permitting procedures, at the Public Authority's sole cost and expense.

e. **Operation and Maintenance.** Railroad will perform all necessary operation and maintenance of and for the Devices, at the Public Authority's sole cost and expense.

f. **Other Work.**

Railroad on reasonable notice from the Public Authority, will perform such other Work as may be necessary for or incidental to the use of the Devices, including without limitation

repairs and replacement of all or any part of the Devices, whether or not such is considered to be part of maintenance, at the Public Authority's sole cost and expense.

9. Sounding of Locomotive Horns.

The Railroad's rights and duties regarding the sounding of the locomotive horns at the subject crossings shall be as set out in 49 CFR Part 222, and by other applicable law. Nothing contained in this Agreement shall be construed to alter such rights and duties.

10. Accounting and Payment.

a. Records. The Railroad and Public Authority each agree to keep records of the actual costs and expenses incurred by them, or for their account, in the performance of the Work or payment for it, provided for herein. The books, papers and accounts of the parties hereto, so far as they relate to items of expense, labor, and materials, or are in any way connected with the Work herein contemplated, shall at all reasonable times during regular office hours be open to inspection and audit by agents and authorized representatives of the parties hereto for a period of three (3) years from the date the final bill has been submitted by Railroad.

b. Invoicing. The Railroad will invoice the Public Authority for all Costs.

c. Payments. The Public Authority shall make all payments to Railroad within no later than thirty (30) days after submittal of Railroad's invoices. Interest on any overdue amounts shall be at prime plus two percent, unless a lesser rate is required by state law.

d. Refunds. If the Railroad has overestimated the Costs, and the actual Cost is less than the Public Authority has paid based on estimates, the Railroad will refund such overpayment Costs, within sixty (60) days after the final reconciliation for the Project is performed.

11. Defense of Claims.

Public Authority and Railroad agree that they will cooperate as necessary in defense of any claim, demand, investigation or litigation arising out of or related to this Agreement, the Work, the Project, or the Devices.

12. Enforceability and Choice of Law.

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of [insert applicable state]. Litigation to enforce, or arising out of, or related to or connected with this Agreement shall be instituted and maintained solely before the State of _____ District Court for _____ County, _____.

13. Term and Termination.

This Agreement shall be in force and effect until terminated pursuant to this Section 13 or until it otherwise is terminated in accordance with law. At Railroad's sole and exclusive election, this Agreement immediately and automatically shall terminate if the Public Authority is in material breach of any term or obligation of Sections 2, 3, 4, 5, 6, 7, 10c., or 11, the Railroad notifies the Public Authority of the breach, and the Public Authority fails to fully cure such breach within thirty (30) days after notice is given. This termination shall be effective at 12:01 a.m. of the 31st day after notice. Such termination shall not release the Public Authority of liability for fulfilling any obligation that has accrued prior to the termination date. Moreover, the rights specified in this Section 13 are cumulative of and in lieu of any and all rights and remedies Railroad may otherwise have.

14. Binding Effect.

The covenants hereof shall inure to and bind each party's successors and assigns; provided no right of the Public Authority shall be transferred or assigned, either voluntarily or involuntarily, except by express written agreement acceptance to the Railroad.

15. Entire Agreement, Rules of Construction and Severability.

This Agreement shall be construed without regard to who drafted or initiated the drafting of all or any provisions of this Agreement. Each of the parties is sophisticated in the matters at issue here, and each relies on its own expertise and its own officers', managers', and attorneys' advice. Neither relies on any representations by the other party or on the other party's expertise or advice in entering into this Agreement. This Agreement includes all Exhibits hereto, and is the entire agreement between the parties. It supercedes all prior communications, understandings, and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both parties. In the event any portion of this Agreement is deemed void or unenforceable, this will not void or render unenforceable any other provision hereof, and the voided or unenforceable portion shall be deemed severed from the rest of this Agreement and the remaining Agreement shall continue to be enforceable.

16. Notices.

Any notice due hereunder, and each communication concerning matters within the scope of hereof, shall be made in writing and shall be effective when and on the date and time served on or received by the receiving party personally or by express delivery or certified U.S. mail (return receipt requested). Such notices and communications shall be addressed to the following persons, at the following addresses, or at such other address as the parties may from time to time direct in writing:

Railroad: Union Pacific Railroad Company
ATTN: Assistant Vice President Engineering – Design
1400 Douglas Street, Mail Stop 0910
Omaha, Nebraska 68179-0910
Facsimile: (402) 501-0324

With copies to: Union Pacific Railroad Company
ATTN: Vice President – Real Estate
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179-1690

Public Authority: Public Authority of _____
ATTN: **[identify individual or officer]**
[address]

Personal service notice will be deemed to have occurred or been given upon receipt. Notices and communications only sent by U.S. Mail will be deemed to have occurred and been given no later than five (5) days after deposited with the United States Postal Service, unless actual receipt occurs before then

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year first hereinabove written above.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

PUBLIC AUTHORITY OF _____, a
municipal corporation of the State of

By _____

By _____

Title: Assistant Vice President
Engineering

Title: _____

EXHIBIT 1
TO
AGREEMENT REGARDING
QUIET ZONE WARNING DEVICES

LOCATIONS OF CROSSINGS

EXHIBIT 2

TO

**AGREEMENT REGARDING
QUIET ZONE WARNING DEVICES**

DESCRIPTION OF DEVICES AND PROJECT

EXHIBIT 3

TO

**AGREEMENT REGARDING
QUIET ZONE WARNING DEVICES**

**DETAIL OF ADDITIONAL COSTS FOR PRE-ESTIMATE COSTS,
PREPARATION OF ESTIMATES, AND PRELIMINARY ENGINEERING WORK**

EXHIBIT 4
TO
AGREEMENT REGARDING
QUIET ZONE WARNING DEVICES

RAILROAD'S ESTIMATE OF MATERIAL AND FORCE WORK

EXHIBIT 5

TO

**AGREEMENT REGARDING
QUIET ZONE WARNING DEVICES**

ESTIMATED ANNUAL INCREMENTAL COST RELATIVE TO EACH CROSSING
