

THIS AGREEMENT is made and entered into by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation, hereinafter styled ("Railway") and the **City of Macedonia**, Ohio, a local governmental entity, hereinafter styled ("Public Authority").

W I T N E S S E T H: THAT

WHEREAS, Public Authority, for its sole benefit and at its own cost and expense, as outlined in the letter of understanding dated November 5, 2009, which is attached hereto and incorporated herein by reference as Exhibit "A", is proposing to implement a Quiet Zone at which locomotive horns are not routinely sounded as set forth in federal regulation (49 CFR Part 222) within their community from Railway Milepost **RD-100.90** to Milepost **RD-101.60**; and

WHEREAS, such implementation requires modifications to a public road or highway known as **Twinsburg Road, DOT: 503033D**, hereinafter called ("Public Crossing"), upon and across, at grade, the right of way or property and track (whether more than one track) of Railway, located at **Milepost RD-101.25** at or near **Macedonia, Summit County, Ohio**, located substantially as shown upon Drawing Number **24121013**, attached hereto and incorporated herein as **Exhibit "B"**; and

WHEREAS, Public Authority has requested Railway to perform certain work, hereinafter called ("Modifications"), in connection with Public Authority's intent to implement a Quiet Zone encompassing the Public Crossing, all of which Railway is willing to do, in accordance with the terms and conditions hereinafter expressed and contained; and

WHEREAS, the costs associated with the construction and implementation of the Quiet Zone in an amount not to exceed \$168,323 shall be paid with funds received under the American Recovery and Reinvestment Act of 2009 ("ARRA") as more fully described in City of Macedonia Ordinance No. 33-2009 and the Acknowledgement and Acceptance attached thereto both incorporated herein as Exhibit "C".

NOW THEREFORE, the PARTIES HERETO agree as follows:

1. Public Authority, in order to obtain entitlement to or approval of a Quiet Zone under 49 CFR Part 222, hereby contracts with Railway for Railway to construct and/or install upon and across, at grade, the right of way or property and track (whether more than one track) of Railway, at the aforescribed location, the below described Modifications:

**Install and maintain Constant Warning Time track circuitry and Circuitry for a Power Off Indicator. Also, make adjustments as necessary to warning devices to meet current Manual of Uniform Traffic Control Devices (MUTCD for the warning of traffic over and upon the Public Crossing, of such character, specification and design as may be approved by the Superintendent of Railway or his duly authorized representative.**

However, the Railway reserves its right to continue to maintain, repair, renew and operate its railway and appurtenances across the Public Crossing, and to construct such additional tracks and other railway facilities across the Public Crossing, and to maintain, repair, renew and operate the same as in the judgment of Railway may be requisite.

2. Railway will, for the accommodation of and at the expense of Public Authority, perform the Modifications; and revise, relocate and reconstruct signal facilities and other railway facilities in such manner as may be necessary to this undertaking, all in accordance with plans, specifications and estimates prepared by Railway as outlined in the preliminary engineering document dated September 8, 2008,

attached hereto as Exhibit "D", said plans, specifications and estimates being made a part hereof by reference. Public Authority will pay to Railway, promptly upon invoice rendered therefore, the actual cost of all Modifications and associated work performed by Railway pursuant to this Agreement, including but not limited to the expenditures herein expressly described, and including all costs associated with flagging undertaken at the crossing, and in no event shall the amount exceed the estimated sum. The cost of said work to be performed by Railway in connection with a majority of the Modifications is being funded by the ARRA administered by the Ohio Railroad Development Commission (ORDC) under a separate project and agreement.

3. The Modifications and associated equipment as installed or constructed pursuant to this Agreement shall be maintained in operation by Railway. Public Authority shall pay an annual maintenance fee to reimburse Railway for maintenance costs associated with maintaining Public Crossing as long as Railway may operate its railway at the Public Crossing, or until it is mutually agreed between the parties hereto that the Modifications are no longer necessary at the Public Crossing, or until the Public Crossing is abandoned or other legal requirements make it necessary to cease operation and maintenance. An initial invoice shall be rendered by the Railway to the Public Authority upon the anniversary date of installation of the Modifications and annually thereafter on the anniversary of the in-service date. The current annual maintenance fee applicable to this Public Crossing is \$1,367.00 subject to future increase. The initial maintenance fee shall be paid from funds obtained through the ARRA. The Railway will notify the Public Authority of any increase in the annual maintenance fee at least six months before the effective date to permit budgeting of funds. Annual increases shall not exceed **3% per year from the year of the last increase.**

4. It is agreed that prior to the performance by Railway of any work pursuant to this agreement the Public Authority shall pay the Railway a one time non-refundable handling fee in the amount of \$2,800.00 for necessary review and research in connection with processing the application of this Quiet Zone proposal. The cost of said handling fee in connection with this Quiet Zone proposal shall be paid from funds obtained through the ARRA as administered by the Ohio Railroad Development Commission (ORDC) under a separate project and agreement.

5. Public Authority agrees that, in coordination with the Modifications and associated equipment to be installed and constructed pursuant to this Agreement by Railway, it will have installed and constructed certain Qwick Kurb highway median dividers along 100 feet of roadway. The cost to purchase, engineer and install the median dividers is estimated to cost \$17,870.00. The cost shall also be paid from funds obtained through the ARRA as administered by the Ohio Railroad Development Commission under a separate project and agreement.

6. Railway agrees to hold harmless and indemnify Public Authority from all claims and to reimburse Public Authority for any expense incurred as a result Railway's obligations set forth in this Agreement including but not limited to investigating and defending a claim or suit resulting from Railway's actions under this Agreement.

7. Railway agrees to ensure compliance with Ohio's Prevailing Wage laws.

8. Should the use of the Public Crossing be abandoned, then all rights hereby granted to Public Authority shall thereupon cease and terminate.

9. The word "Railway" as used herein shall include any other company whose property at the aforesaid location may be leased or operated by Railway. Said term also shall include Railway's

officers, agents and employees, and any parent company, subsidiary or affiliate of Railway and their officers, agents and employees.

10. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter of this Agreement. This Agreement shall not be changed orally but only by an agreement in writing signed by both parties to this Agreement.

11. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Ohio, notwithstanding any conflict of law doctrines or laws of any jurisdiction to the contrary.

12. Any waiver by any party to any act, failure to act or breach on the part of any other party to this Agreement shall not constitute a waiver by such waiving party of any prior or subsequent act or failure to act or breach by such other party.

13. If any term or provision of this Agreement is determined to be illegal or unenforceable, then the remaining terms and provisions of this Agreement shall be enforced and such illegal or unenforceable term or provision shall be enforced to the fullest extent permitted by applicable law.

14. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate, each part being an original, as of the \_\_\_ day of \_\_\_\_\_, 2010.

Witness: **NORFOLK SOUTHERN RAILWAY COMPANY**

\_\_\_\_\_  
As to Railway **General Manager**

Witness: **CITY OF MACEDONIA**

\_\_\_\_\_  
As to Public Authority **Mayor**

APPROVED AS TO LEGAL FORM:

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JOSEPH W. DIEMERT, JR.  
Director of Law  
City of Macedonia

## FISCAL OFFICER'S CERTIFICATE

It is certified that \$168,323, the amount required to meet the contract, agreement, obligation, payment or expenditure for the attached, has been lawfully appropriated, authorized, or directed for such purpose, and is in the treasury or in the process of collection to the credit of the ARRA Fund, free from any obligation or certification now outstanding.

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Loren Sengstock  
Finance Director  
City of Macedonia

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Date