

AGENDA
CITY COMMISSION SPECIAL MEETING
Monday, August 24, 2015
9:00 A.M.

I. SPECIAL MEETING CALLED TO ORDER AND CITY CLERK ANNOUNCING QUORUM PRESENT.

A. The City, Federal Railroad Administration (FRA), Kansas Department of Transportation (KDOT) and the BNSF Railway Company (BNSF) have completed the necessary documents related to the TIGER VI grant for the Southwest Chief Route Improvement Project. The Governing Body is asked to consider and approve the Grant Agreement with the FRA, the revised agreement between the City and KDOT, and the agreement between the City and BNSF for project construction.

II. ADJOURN.

MEMORANDUM

TO: GOVERNING BODY

FROM: Steve Cottrell

DATE: 20 August 2015

RE: TIGER VI GRANT

ISSUE

The City, Federal Railroad Administration (FRA), Kansas Department of Transportation (KDOT) and the BNSF Railway Company (BNSF) have completed the necessary documents related to the TIGER VI grant for the Southwest Chief Route Improvement Project. The Governing Body is asked to consider and approve the Grant Agreement with the FRA, the revised agreement between the City and KDOT, and the agreement between the City and BNSF for project construction.

BACKGROUND

As the recipient of the TIGER VI grant from the U.S. Department of Transportation for the Southwest Chief Route Improvement Project, the City will be involved in three agreements with various parties.

- 1) Federal Railroad Administration grant agreement
- 2) City and KDOT agreement for project administration
- 3) City and BNSF for construction of the project

The FRA Grant Agreement establishes the City as the primary grant recipient; we will be responsible for paying the bills and getting reimbursed from the FRA. The City currently has the total \$300,000.00 local match from the coalition members. KDOT will be paying their \$3,000,000.00 within 15 days of the agreement date. BNSF will deduct their \$2,000,000.00 share, and AMTRAKs \$4,000,000.00 share from the invoices as the work progresses.

On May 5th, the City-KDOT agreement No. 12-15, was previously approved. At that time, we believed that KDOT could be the City's agent for project administration, record keeping and reports. As the grant document finalized, we learned that this is not the case, and present a revised KDOT-City agreement for Governing Body consideration and approval.

The BNSF-City agreement acknowledges BNSF's obligations under the grant and establishes the payment process between the City and BNSF.

All documents have been reviewed by Staff and City Counselor Grisell, and are recommended for approval.

ALTERNATIVES

- 1) Approve the FRA Grant Agreement, the KDOT and City agreement and the BNSF and City agreement for construction of the project.



Engineering Department

Steven F. Cottrell, P.E.,
City Engineer

C.W. Harper, P.E.
Assistant City Engineer

CITY ADMINISTRATIVE
CENTER
301 N. 8TH
P.O. Box 998
GARDEN CITY, KS
67846-0998
620.276.1130
FAX 620.276.1137
www.garden-city.org

2) Defer action until a later date.

RECOMMENDATION

Staff recommends Governing Body approval of the FRA Grant, the KDOT-City and the BNSF-City agreements.

FISCAL

Funding of the project is being shared by multiple partners, including the Southwest Chief Coalition, KDOT, AMTRAK, BNSF and the TIGER grant.



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U.S Department of Transportation

Federal Railroad Administration

Grant Agreement

1. RECIPIENT NAME AND ADDRESS City of Garden City, Kansas 301 N 8th St Garden City, KS 67846-5340	2. AGREEMENT NUMBER: FR-TII-0033-15-01-00	3. AMENDMENT NO. 0		
	4. PROJECT PERFORMANCE PERIOD:	FROM 09/01/2015	TO 04/30/2017	
	5. FEDERAL FUNDING PERIOD:	FROM 09/01/2015	TO 04/30/2017	
1A. IRS/VENDOR NO. 486009982	6. ACTION New			
1B. DUNS NO. 073324220				

7. CFDA#: 20.933	TITLE	FEDERAL	NON-FEDERAL	TOTAL
8. PROJECT TITLE The Southwest Chief Route Improvement Project	9. PREVIOUS AGREEMENTS	0.00	0.00	0.00
	10. THIS AGREEMENT	12,469,963.00	9,300,000.00	21,769,963.00
	11. TOTAL AGREEMENT	12,469,963.00	9,300,000.00	21,769,963.00

12. INCORPORATED ATTACHMENTS
THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF:
Standard Terms and Conditions, Attachment 1; Statement of Work, Attachment 2
Approved Project Budget, Attachment 3; Performance Measurement Table, Attachment 4; Assurances and Certifications, Attachment 5

13. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT
Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2014, Division L of the Consolidated Appropriations Act, 2014 (P.L. 113-76)

14. REMARKS

GRANTEE ACCEPTANCE		AGENCY APPROVAL	
15. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL Janet A. Doll, Mayor		17. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL	
16. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL	16A. DATE	18. SIGNATURE OF AUTHORIZED FRA OFFICIAL	18A. DATE

AGENCY USE ONLY

19. OBJECT CLASS CODE: 41010	20. ORGANIZATION CODE: 9013000000
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21. ACCOUNTING CLASSIFICATION CODES				
DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT
FR-TII-0033-15-01-00	2714160143	2015	0143T629Y0	12,469,963.00

AWARD ATTACHMENTS

City of Garden City, Kansas

FR-TII-0033-15-01-00

1. Standard Terms and Conditions, Attachment 1
2. Statement of Work, Attachment 2
3. Approved Project Budget, Attachment 3
4. Performance Measurement Table, Attachment 4
5. Assurances and Certifications, Attachment 5

Attachment 1
GRANT AGREEMENT UNDER THE
CONSOLIDATED APPROPRIATIONS ACT, 2014 (Pub. L. 113-76,
JANUARY 17, 2014)
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS
DISCRETIONARY GRANT PROGRAM
(FY 2014 TIGER DISCRETIONARY GRANTS)

This agreement (the “Agreement” or “Grant Agreement”) reflects the selection of the recipient identified in section 1 of the Cooperative Agreement (page 1) (“Recipient”) as a Recipient of a grant awarded under the provisions of the Consolidated Appropriations Act, 2014 (Pub. L. 113-76, January 17, 2014), regarding National Infrastructure Investments (the “Act”). The grant program under the Act is referred to as “FY 2014 TIGER Discretionary Grants” or “TIGER Discretionary Grants.”

SECTION 1. LEGISLATIVE AUTHORITY

a) The U.S. Department of Transportation (“DOT” or “Government”) is authorized to award \$600 million in FY 2014 TIGER Discretionary Grants pursuant to The Consolidated Appropriations Act, 2014 (Pub. L. 113-76, January 17, 2014), (the “Act”). This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or “TIGER Discretionary Grants,” program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”), the FY 2010 TIGER Discretionary Grants pursuant to Title I (Department of Transportation) of Division A of the Consolidated Appropriations Act, 2010, the FY 2011 TIGER Discretionary Grants pursuant to Title XII (Transportation, Housing and Urban Development, and Related Agencies) of Division B of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10, Apr. 15, 2011), the FY 2012 TIGER Discretionary Grants pursuant to The Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-055, Nov. 18, 2011), and the FY 2013 TIGER Discretionary Grants pursuant to The Further Continuing Appropriations Act, 2013 (Pub. L. 113-6, March 26, 2013). Because of the similarity in program structure and objectives, DOT is referring to the grants for National Infrastructure Investments under the Act as the “FY 2014 TIGER Discretionary Grants” or “TIGER Discretionary Grants.”

b) The grant awards made under TIGER Discretionary Grant program are in full compliance with the Act and the Notice of Funding Availability published in the *Federal Register* (79 FR 11854, March 3, 2014).

c) Funds for the TIGER Discretionary Grants program are being awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Additionally, the awards ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes.

d) The Act specifies that not less than \$120 million of the funds provided for FY 2014 TIGER Discretionary Grants be used for projects located in rural areas.

e) The Act allows for up to \$35 million of the funds provided for FY 2014 TIGER Discretionary Grants to be used for the planning of eligible facilities.

SECTION 2. GENERAL TERMS AND CONDITIONS

a) This Agreement is entered into between DOT, acting through the Federal Railroad Administration (“FRA”), and the Recipient, for the purpose of carrying out DOT’s FY 2014 TIGER Discretionary Grants Program, which is under the control and supervision of DOT, pursuant to the Act. Funds have been transferred to FRA for the purpose of carrying out this Project. The Agreement will be administered by FRA (also referred to herein as the “Government”).

b) The Recipient shall be responsible for ensuring that the Project is financed, constructed, operated and maintained in accordance with this Agreement and in compliance with all applicable Federal laws, regulations and policies.

c) The maximum obligation of the Government payable under this Agreement shall be as specified in section 4(d) of this **Attachment 1** of the Agreement, subject to all the terms and conditions in this Agreement and of all other Federal grant awards funding the Project. FY 2014 TIGER Discretionary Grant funds for this Project will be authorized for expenditure by the Grantee only when this Agreement is fully executed by both parties.

d) Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 C.F.R. part 200 and DOT’s implementing regulations at 2 C.F.R. 1201 and the provisions of such regulations and procedures as the Government may prescribe. Final determination of the Grant’s expenditures may be based upon a final review of the total amount of agreed project costs, and settlement will be made for adjustments to the Grant amount in accordance with applicable government-wide cost principles under 2 C.F.R. part 200 and DOT’s implementing regulations at 2 C.F.R. part 1201. If there are any differences between the requirements of 2 C.F.R. part 200, DOT’s implementing regulations at 2 C.F.R. part 1201, and any applicable statutory authority, the statute shall control.

e) The Recipient agrees to notify the Government within 30 calendar days of any change in circumstances or commitments that adversely affect the Recipient’s plan to complete the Project as is described in **Attachments 2 and 3** to this Agreement. In its notification, the Recipient shall advise the Government of the actions it has taken or plans to take to ensure completion of the Project and shall reaffirm its commitment to the Government as set forth in this Agreement. The Recipient is solely liable for any funding shortfalls pertaining to the Project as agreed to in the Agreement. The TIGER Discretionary Grant Award Amount will remain unchanged. (See section 13 of this **Attachment 1** to the Agreement regarding termination).

f) The Grantee agrees to carry out and complete the Project without undue delays and in accordance with the terms hereof, including the Estimated Project Schedule set out in **Attachment 2**, and such regulations and procedures as the Government may prescribe.

g) The Recipient has submitted a request for Federal assistance, hereinafter referred to as the “Technical Application” or “Application,” hereby incorporated by reference into this Agreement, and the Government is relying upon the Recipient’s assurances, certifications, and other representations made in the Technical Application, or any other related documents submitted to the Government; and, in its submissions, the Recipient has demonstrated justification for the Project, and has demonstrated the financial and technical feasibility of the Project, including the ability to start construction quickly upon receipt of the Grant; to expend Grant funds once construction starts; and to receive all necessary environmental, state and local planning, and legislative approvals necessary for the Project to proceed in accordance with the Project Schedule. This Grant is made to the Grantee for the Project, including the Project’s scope, based upon the assurance/confirmation that all required funding has been obtained and committed, and upon the timeline for completion of the Project.

h) The Government has determined that the Project is an Eligible Project for TIGER funding, as it provides planning for or construction of a highway or bridge project, public transportation project, passenger or freight rail transportation project, or a port infrastructure project, or other such eligible project as authorized, and that the Project will have a significant impact on the Nation, a metropolitan area, or a region. The Government has determined that the Recipient should receive the award of a Grant based on a review of the Project’s Technical Application, as it meets the requirements specified in the Act and the March 3, 2014, *Federal Register* Notice, “Notice of Funding Availability for the Department of Transportation’s National Infrastructure Investments Under the Consolidated Appropriations Act, 2014” (Available at <https://www.federalregister.gov/articles/2014/03/03/2014-04627/notice-of-funding-availability-for-the-department-of-transportations-national-infrastructure04627.pdf>.)

i) The Recipient’s progress will be monitored periodically by the Government, both programmatically and financially, to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The Recipient is responsible for monitoring award activities, to include sub-awards, and accountable to the Government for the use of the funds provided and to assure that the Federal award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

j) The Recipient agrees to take all steps, including initiating litigation, if necessary, to recover Federal funds if the Government determines, after consultation with the Recipient, that such funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner in undertaking the Project. For the purposes of this Agreement, the term “Federal

funds” means funds however used or disbursed by the Recipient that were originally paid pursuant to the Agreement.

k) The Recipient agrees to retain all documents relevant to the Grant award for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Recipient agrees to furnish the Government, upon request, all documents and records pertaining to the determination of the Grant amount or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Recipient, in court or otherwise, involving the recovery of such Grant amount shall be approved in advance by the Government.

l) The Government is subject to the Freedom of Information Act (FOIA). The Recipient should therefore be aware that all applications and related materials submitted by the Recipient related to this Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

m) The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

n) The Recipient agrees to: 1) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and 2) implement best practices, consistent with our nation’s civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – have an opportunity to benefit from activities funded through this Agreement. An example of a best practice under 2) above would be to incorporate key elements of the Department’s Disadvantage Business Enterprise (DBE) program (see 49 C.F.R. Part 26) in contracts under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Recipient would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a Recipient, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement. The Recipient must provide FRA a plan for incorporating the above best practice into its implementation of the Project within 30 days following execution of this Agreement. If the Recipient is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Recipient agrees to provide the FRA with a written explanation and an alternative program for ensuring that contractors owned and controlled by socially and economically disadvantaged individuals are provided the opportunity to benefit from activities funded through this Agreement.

o) The Government encourages the Recipient and the State Department of Transportation acting as the limited agent on behalf of the Recipient (if applicable), to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or –rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving,” Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving,” Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf). This includes, but is not limited to, the Recipient and the State Department of Transportation acting as the limited agent on behalf of the Recipient:

- 1) considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- 2) conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- 3) encouraging voluntary compliance with the agency’s text messaging policy while off duty.

The Recipient is encouraged to insert the substance of this clause in all assistance awards.

Where a Recipient, and the State DOT if acting as a limited agent for the Recipient, is located within a State that already has enacted legislation regarding texting while driving, that State’s law controls and the requirements of this paragraph will not apply to or be a part of this Agreement.

p) The Recipient shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.

q) Notwithstanding anything to the contrary contained herein, the provisions of this Agreement relating to reporting requirements set forth in section 10 of **Attachment 1** of this Agreement shall survive the expiration or earlier termination of this Agreement.

SECTION 3. APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement for a FY 2014 TIGER Discretionary Grant, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to the Agreement include, but are not limited to, the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. § 470f
- f. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. § 469a through § 469c.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act, P.L. 90-148, as amended 42 U.S.C 7401 et. Seq.
- i. Section 404 of the Clean Water Act, as amended 33 U.S.C. §§ 1251, et seq.
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended.
- k. Coastal Zone Management Act, P.L. 92-583, as amended.
- l. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- x. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- y. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- z. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- aa. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. § 1681 through § 1683, and § 1685 through § 1687
- bb. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- cc. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d *et seq.*
- dd. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101 -1104 541, et seq.
- ee. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ff. Freedom of Information Act - 5 U.S.C. § 552, as amended
- gg. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- hh. Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- ii. Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- jj. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661
- kk. Section 9 of the Rivers and Harbors Act and General Bridge Act of 1946 - 33 U.S.C. §

- ll. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- mm. Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.
- nn. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended -- 42 U.S.C. §§ 9601-9657
- oo. Safe Drinking Water Act -- 42 U.S.C. §§ 300F-300J-6
- pp. Wilderness Act -- 16 U.S.C. §§ 1131-1136
- qq. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 -- 42 U.S.C. § 6901, et seq.
- rr. Migratory Bird Treaty Act 16 U.S.C. § 760c-760g
- ss. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- tt. Cargo Preference Act of 1954 – 46 U.S.C. § 55305

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards– 2 C.F.R. part 200 and DOT’s implementing regulations at 2 C.F.R. 1201.
- b. Any other applicable OMB circular based on the specific fiscal year TIGER Discretionary Grant Recipient
- c. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- d. Investigative and Enforcement Procedures - 14 C.F.R. Part 13
- e. Procedures for predetermination of wage rates - 29 C.F.R. Part 1
- f. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
- g. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
- h. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.
- i. Contractor Qualifications - 48 C.F.R. Part 9

- j. New Restrictions on Lobbying – 49 C.F.R. Part 20
- k. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- l. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- m. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- n. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- o. DOT's oversight of DOJ's ADA regulations for non-transit programs, including the ADA Accessibility Guidelines, required by the DOJ regulations at 28 C.F.R. Part 35
- p. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- q. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- r. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- s. DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- t. Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 C.F.R. Part 40

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are hereby incorporated by reference into the Agreement.

SECTION 4. RECIPIENT AND PROJECT INFORMATION

a) Recipient: This Grant is made to the Recipient for the project as described in the Recipient's Technical Application (the "Project") and the negotiated provisions on the Project's material terms and conditions, including the Project's scope, assurance/confirmation that all required funding has been obtained and committed, and the timeline for completion of this **[urban] [rural]** Project. The Recipient agrees to abide and comply with all terms and conditions of this Agreement and to abide by, and comply with, all requirements as specified in all exhibits and attachments, which are considered as integral parts of this Agreement. In the case of any inconsistency or conflict between the specific provisions of this Agreement, the exhibits and the attachments, such inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions and terms of this Agreement; second, by giving preference to the provisions and terms of **Attachment 1**; and third, by giving preference to the provisions and terms of other attachments.

The Dun and Bradstreet Data Universal Numbering System (DUNS) No. of the Recipient is identified in section 1B on the cover page of this Agreement (page 1).

Name of any First-Tier Sub-Recipients (if applicable—to be reported if/when identified. If not applicable, note as N/A) N/A.)

DUNS No. of First-Tier Sub-Recipients (if applicable—to be reported if/when identified. If not applicable, note as N/A) N/A.)

b) Notices:

Notices required by this Agreement should be addressed as follows:

As to the FRA:

Lisa Smith

Grant Manager

Federal Railroad Administration

1200 New Jersey Avenue, SE, Washington, DC 20590

(202) 493-6159

Lisa.Smith@dot.gov

As to the Recipient:

Steven F. Cottrell, PE, City Engineer

City of Garden City

P.O. Box 998 Garden City, KS 67846

(620) 276-1132

[*Steve.Cottrell@gardencityks.us*](mailto:Steve.Cottrell@gardencityks.us)

Notwithstanding section 13(c) of this attachment, the Recipient may update contact information listed in this paragraph by written notice (formal letter) to the Government without the need for a formal amendment to this Agreement.

c) Recipient Obligations for the Project

- 1) Project: The Recipient shall furnish all personnel, facilities, and equipment, and other materials and services (except as otherwise specified herein) necessary to perform the approved Project, as set forth in the Statement of Work and the Estimated Project Schedule (**Attachment 2**), the Approved Project Budget (**Attachment 3**), and in accordance with the representations, certifications, and assurances set forth in the Recipient's Application, incorporated herein and made a part hereof.
- 2) Term: Unless sooner terminated in accordance with its terms, this Agreement shall be valid for the time period indicated on the cover page of this Agreement (page 1), sections 4 and 5. This time period includes the period for both completion of the

Project, and completion and submission of any reports or deliverables required by this Agreement.

3) State and Local Planning:

Planning Program Date: *Provide date that project was included in the relevant State, metropolitan, or local planning documents, or N/A if not applicable*

4) Environmental Approvals and Processes:

Environmental Documentation Type, Titles, and Date: FRA Categorical Exclusion Worksheet, 06/04/2015

Environmental Decision Type and Date: FRA Categorical Exclusion Worksheet, 06/04/2015

Name of Agency and Office Approving Each Environmental Decision Document:

Federal Railroad Administration

5) Project Schedule:

Planned or Actual Completion of NEPA (if applicable): June 04, 2015

Planned or Actual Completion of Final Design (if applicable): NA

Planned or Actual Contract Award Date (if applicable): NA

Planned or Actual Construction Start Date: September 1, 2015

Planned Project Substantial Completion Date: April 30, 2017

d) Project Funding

1) FY 2014 TIGER Discretionary Grants Program Funding:

The total not-to-exceed amount of Federal funding that is provided under this Agreement is identified on the cover page of this Agreement (page 1), sections 9-11. The FRA's liability to make payments to the Recipient under this Agreement is limited to those funds obligated under this Agreement as indicated above and any subsequent amendments.

2) FY 2014 Non-TIGER Financial Commitment (if any):

- A. The Recipient hereby commits and certifies that it will provide funds (and ensure the availability of other sources of funding, such as local/private funding or in-kind contributions) in an amount sufficient, together with the Federal contribution (acknowledging the limitations as set forth in this Agreement), to assure timely and full payment of the Project costs as necessary to complete the Project.
- B. The Recipient agrees to notify the FRA of any change in circumstances or commitments that adversely affect the Recipient's plan to fund the Project costs necessary to complete the Project, as set forth in the Recipient's Application, in accordance with the provisions of section 2(e) of this **Attachment 1**.

3) Grant Funds and Sources of Project Funds:

- A. The total estimated cost of the Project (as set forth in the Approved Project Budget) is \$21,769,963.00.
- B. FRA funding assistance under the FY 2014 TIGER Discretionary Grant Program is limited to an estimated 57.2806% of the total estimated cost for completing the Project, but not greater than \$12,469,963.00. If there are any cost savings, or if the contract award is under the engineer's estimate, the Recipient's funding amount and percentage share may be reduced, provided that the Recipient's share of the costs under the Act may not be reduced below 20% for urban area projects. For urban projects, the Recipient hereby certifies that not less than \$9,300,000.00 in non-Federal funds are committed to fund the Project in order to satisfy the Act's requirement that at least twenty percent (20%) of the Project's costs are funded by non-Federal sources.
- C. Recipient funding assistance (including all sources other than that provided in (B) above, which may include other Federal funds, state funds, local funds, or other contributed funds) is estimated to be 42.7194% of the total cost of the Project. Consequently, of the amount specified in subparagraph (A) of this subsection, Recipient funding is estimated to be \$9,300,000.00. If there are any cost savings, or if the contract award is under the engineer's estimate, the Recipient's funding amount and percentage share may be reduced, provided

that the Recipient's share of the costs under the Act may not be reduced below 20% for urban area projects.

- D. When requesting payment, the Recipient must identify: (1) the total amount of costs for which funding is requested; (2) Recipient funding assistance applied to the Project; and (3) the balance of federal assistance dollars requested for payment.
- E. Funding responsibility for the Project under this Agreement is recapped as follows:

FRA Funding Assistance	+	Recipient Cash Contribution (20% of Total)	+	Recipient In-Kind Contribution (0% of Total)	+	Other Federal Funding	=	Total Project Funding (100% of Total)
\$12,469,963.00	+	\$9,300,000.00	+	\$000,000.00	+	\$000,000.00	=	\$21,769,963.00

- F. FRA hereby authorizes the incurrence of pre-agreement costs by the Grantee on or after August 1, 2015, in anticipation of the execution of this Grant Agreement, but such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.

SECTION 5. REIMBURSEMENT OF PROJECT COSTS

Pursuant to 2 C.F.R. 200.305(a), the Recipient may request reimbursement of costs incurred in the performance hereof as are allowable under the applicable cost provisions (see 2 C.F.R. part 200 and DOT's implementing regulations at 2 C.F.R. part 201), not-to-exceed the funds currently available as stated in this Agreement, and in accordance with the provisions of section 4(d)(3) of this **Attachment 1**.

- a) Requests for Reimbursement: When requesting reimbursement of costs incurred, the Recipient shall submit supporting cost detail with the SF 270 to clearly document costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, and travel. The FRA contact person identified in section 4(b) of this **Attachment 1** reserves the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without review and approval by the FRA contact person identified in section 4(b) of this **Attachment 1** to ensure that progress on the Agreement is sufficient to substantiate payment.
- b) Payment of FRA funding through FRA's Office of Financial Services, shall be made on a reimbursable basis whereby the Recipient will be reimbursed, after the submission of proper invoices, for actual expenses incurred.

The Recipient will use the Automated Clearing House (ACH) Electronic Vendor Payment method for transfer of reimbursed funds and submit a SF-270 form. Requests for reimbursement

must be made through the Department of Transportation's Delphi eInvoicing System. Information on the Delphi eInvoicing System can be found at: <http://www.dot.gov/cfo/delphi-einvoicing-system.html>. To obtain access to the Delphi eInvoicing System, please contact the FRA individual identified in section 4(b) of this **Attachment 1**.

- c) To seek reimbursement from the Government, the Recipient shall submit documentary evidence of all obligations associated with the Project set forth in this Agreement, and set forth the breakdown of those Project costs (those to be covered by the Federal FY 2014 TIGER Discretionary Grants Program contribution, and those to be covered by all sources other than the FY 2014 TIGER Discretionary Grants Program, which may include other Federal funds, state funds, local funds, or other contributed funds). The FRA will reimburse the Recipient upon request for all valid expenses (FY 2014 TIGER Discretionary Grants Program share of Project costs), upon FRA's acceptance of such documentation. All reimbursement requests to the Government shall be supported by sufficient documentation to justify reimbursement of the Recipient, including invoices and proof of payment of an invoice.
- d) The Recipient shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government.
- e) The Recipient shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or the like.
- f) Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
- g) **Financial Management System:** By signing this agreement, the Recipient verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs, and that it complies with the financial management system requirements of 2 C.F.R. part 200 and DOT's implementing regulations at 2 C.F.R. part 1201. The Recipient's failure to comply with these requirements may result in Agreement termination.
- h) Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

SECTION 6. RESPONSIBILITY AND AUTHORITY OF THE RECIPIENT

- a) **Legal Authority.** The Recipient affirms that it has the legal authority to apply for the grant, and to finance and carry out the proposed project identified in its Technical Application; that a resolution, motion or similar action has been duly adopted or passed as an official act of the Recipient's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Recipient to act in connection with the application and to provide such additional information as may be required.
- b) **Funds Availability.** The Recipient affirms that it has sufficient funds available for that portion of the Project costs that are not to be paid by the Government. The Recipient also affirms that it has sufficient funds available to assure operation and maintenance of items funded under the Agreement that it will own or control.

c) Preserving Rights and Powers. The Recipient will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the Agreement without the written approval of the Government, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the Recipient. The Recipient agrees that this will be done in a manner acceptable to the Government.

d) Accounting System, Audit and Record Keeping Requirements.

1. The Recipient agrees to keep all project accounts and records that fully disclose the amount and disposition by the Recipient of the proceeds of the grant, the total cost of the Project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. 7501-7507).

2. The Recipient agrees to make available to the DOT and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the Recipient that are pertinent to the grant. The Government may require that a Recipient conduct an appropriate audit. In any case in which an independent audit is made of the accounts of a Recipient relating to the disposition of the proceeds of a grant or relating to the Project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

e) Minimum Wage Rates. The Recipient shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Agreement that involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, et seq.), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

f) Foreign Market Restrictions. The Recipient will not allow funds provided under this grant to be used to fund any project that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

h) Relocation and Real Property Acquisition. (1) The Recipient will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 C.F.R. Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) The Recipient will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 C.F.R. Part 24. (3) The Recipient will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 C.F.R. Part 24.

SECTION 7. LABOR REQUIREMENTS

- a) The Act, regarding FY 2014 TIGER Discretionary Grants, requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code.
- b) Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 C.F.R. Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 C.F.R. 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
- c) Federal agencies providing grants, grant agreements, and loans under the Act shall ensure that the standard Davis-Bacon contract clauses found in 29 C.F.R. 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
- d) For additional guidance on the wage rate requirements of the Act, contact your awarding agency. Recipients of grants, grant agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

SECTION 8. TRANSPARENCY ACT REQUIREMENTS

[THIS SECTION MAY BE UPDATED BASED ON FURTHER OMB GUIDANCE OR REGULATION]

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act” or “the Act”) and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Recipient is required to report as required under the Act, in addition to including the following clause in all first-tier Subawards:

I. Reporting Subawards and Executive Compensation.

a. Reporting of First-Tier Subawards.

1) Applicability. Unless the Recipient (hereinafter in this section referred to as “you”) are exempt as provided in paragraph d. of this section, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section

1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in subsection e. of this section).

2) Where and when to report.

a. You must report each obligating action described in subsection a.1. of this section to <http://www.fsrs.gov>.

b. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

a. the total Federal funding authorized to date under this award is \$25,000 or more;

b. in the preceding fiscal year, you received—

(1) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

c. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report executive total compensation described in subsection b.1. of this section:

a. As part of your registration profile at <http://www.ccr.gov>.

b. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1) Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

a. in the subrecipient's preceding fiscal year, the subrecipient received—

(1) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(2) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

b. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2) Where and when to report. You must report subrecipient executive total compensation described in subsection c.1. of this section:

a. To the recipient.

b. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

a. Subawards,

and

b. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this section:

- 1) Entity means all of the following, as defined in 2 C.F.R. Part 25:
 - a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization;
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- 2) Executive means officers, managing partners, or any other employees in management positions.
- 3) Subaward:
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. — .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).
 - c. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- 4) Subrecipient means an entity that:
 - a. Receives a subaward from you (the recipient) under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.
- 5) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. 229.402(c)(2)):
 - a. Salary and bonus.
 - b. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

c. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

d. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

e. Above-market earnings on deferred compensation which is not tax-qualified.

- a. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

SECTION 9. SINGLE AUDIT INFORMATION FOR RECIPIENTS OF TIGER DISCRETIONARY GRANT FUNDS

a) To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 C.F.R. part 200 and DOT implementing regulations at 2 C.F.R. part 1201, recipients agree to maintain records that identify adequately the source and application of TIGER Discretionary Grant funds.

b) For recipients covered by the Single Audit Act Amendments of 1996 and 2 C.F.R. part 200 and DOT implementing regulations at 2 C.F.R. part 1201, recipients agree to separately identify the expenditures for Federal awards under the Act on the Schedule of Expenditures of Federal Awards (SEFA) required by 2 CFR § 200.510 and the Data Collection Form (SF-SAC) required by 2 CFR § 200.512 . This shall be accomplished by identifying expenditures for Federal awards made under the Act separately on the SEFA, and as separate rows under Item 7 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix “TIGER” in identifying the name of the Federal program on the SEFA and as the first characters in Item 7c of Part III on the SF-SAC.

SECTION 10. REPORTING

Subject to the Paperwork Reduction Act, and consistent with the purposes of the FY 2014 TIGER Discretionary Grants Program, the Recipient agrees to collect data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending. The Recipient further agrees to submit periodic reports to the Government that contain data necessary to measure performance of the Project and to ensure accountability and transparency in Government spending.

a) Project Outcomes and Performance Measurement Reports. The Recipient shall collect the data necessary to track and report on each of the performance measures identified in the Performance Measurement Table in **Attachment 4**, and report results of the data for each measure to the Government periodically, according the reporting schedule identified in **Attachment 4**. Furthermore, the Recipient agrees to provide an initial Pre-project Report and a final Project Outcomes Report to the Government. The Pre-project Report shall consist of current baseline data for each of the performance measures specified in the Performance

Measurement Table in **Attachment 4**. The Pre-project Report shall include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure. The Recipient shall submit the report to the Government before initiating work under this Agreement. The Recipient shall represent that the data in the Pre-project Report is current as of the date it is issued. The Recipient shall submit interim Project Performance Measurement Reports to the Government for each of the performance measures specified in the Performance Measurement Table in **Attachment 4** following Project completion. The Recipient shall submit reports at each of the intervals identified for the duration of the time period specified in the Performance Measurement Table in **Attachment 4**. The Recipient shall represent that the data in each of the interim Project Performance Reports is current as of the final date of the reporting interval. The Project Outcomes Report shall consist of a narrative discussion detailing Project successes and/or the influence of external factors on Project expectations. The Recipient shall submit the Project Outcomes Report to the Government within 3 months of the end date of performance under this Agreement, which includes an *ex post* examination of Project effectiveness in relation to the Pre-project Report baselines. The Recipient shall represent that the data in the Project Outcomes Report is current as of the date it is issued, in accordance with **Attachment 4**. The Recipient shall submit each report via email to each of the Government contacts identified in section 4(b) of this **Attachment 1** of this Agreement and, additionally, to outcomes@dot.gov. The email shall reference and identify in the email subject line the TIGER Grant Number and provide the number of the Performance Measures report submitted.

b) Project Progress and Monitoring Reports. Consistent with the purposes of the FY 2014 TIGER Discretionary Grants Program, to ensure accountability and transparency in Government spending, the Recipient shall submit quarterly progress reports (January 1, April 1, July 1, October 1), and the Federal Financial Report (SF-425), as set forth in section 14(e)(9) of this **Attachment 1**: to the Government on a quarterly basis, on the 30th of the month following the quarter being reported, until completion of the Project. The initial report shall include a detailed description, and, where appropriate, drawings, of the items funded. The Recipient shall submit all required reports and documents to the FRA contact person identified in **Attachment 1**, section 4(b), referencing the Agreement number, and through GrantSolutions in the case of the Federal Financial Report (SF-425)

c) Annual Budget Review and Program Plan. The Recipient shall submit an Annual Budget Review and Program Plan to the Government via e-mail 60 days prior to the end of each Agreement year. The Annual Budget Review and Program Plan shall provide a detailed schedule of activities, estimate of specific performance objectives, include forecasted expenditures, and schedule of milestones for the upcoming Agreement year. If there are no proposed deviations from the Approved Project Budget, **Attachment 3**, the Annual Budget Review shall contain a statement stating such. The Recipient will meet with the Government to discuss the Annual Budget Review and Program Plan. If there is an actual or projected Project cost increase, the annual submittal should include a written plan for providing additional non-TIGER Discretionary Grant sources of funding to cover the Project budget shortfall or supporting documentation of committed non-TIGER Discretionary Grant funds to cover the cost increase.

d) Closeout Process. Closeout occurs when all required Project work and all administrative procedures described in 2 C.F.R. part 200, and DOT implementing regulations at 2 C.F.R. part 1201, are completed, and the Government notifies the Recipient and forwards the final Federal assistance payment, or when the Government acknowledges Recipient's remittance of the proper refund. Within 90 days of the Project completion date or termination by the Government, the Recipient agrees to submit a final Financial Status Report (SF-425), a certification or summary of Project expenses, and third-party audit reports. The Recipient will also provide a report on the final statement of work, schedule, and budget compared against the Statement of Work and the Estimated Project Schedule (**Attachment 2**), and the Approved Project Budget (**Attachment 3**).

SECTION 11. SPECIAL GRANT REQUIREMENTS

a) Except as otherwise provided herein, the Grantee shall ensure the maintenance of Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service (as set forth in the Statement of Work (Attachment 2) for a period of twenty (20) years from the date such Project property was placed in service. In the event the Grantee fails to maintain project property as required by this section for a period of time in excess of six (6) months, the Grantee will refund to the Government a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such original default.

b) The Grantee acknowledges that the purpose of the Project is to benefit railroad transportation. In the event that all intercity passenger rail service making use of the Project property is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project property was placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Grantee shall refund to the Government, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

SECTION 12. ASSURANCES AND CERTIFICATIONS

The Recipient will ensure compliance with the standard FY 2014 TIGER grant program assurances and certifications, attached hereto as **Attachment 5** and made a part hereof.

SECTION 13. TERMINATION, EXPIRATION, AND MODIFICATION

a) Subject to terms set forth in this Agreement, the Government reserves, in its sole discretion, the right to terminate this Agreement, and all of its obligations with this Agreement, unless otherwise agreed to in a signed writing between the Recipient and the Government, if any of the following occurs:

- 1) The Recipient fails to obtain or provide any non-FY 2014 TIGER Discretionary Grant Program contribution or alternatives approved by the Government, in accordance with section 4(d) of **Attachment 1** of this Agreement;

- 2) The Recipient fails to begin construction before 09/01/2016;
- 3) The Recipient fails to begin expenditure of Grant funds by 09/01/2016;
- 4) The Recipient fails to meet the conditions and obligations specified under this Agreement, including, but not limited to, a material failure to comply with the Project Schedule, after giving the Recipient a reasonable opportunity to cure such failure;
- 5) The Government, in its sole discretion, determines that termination of the Agreement is in the public interest.

b) Funds made available under this Agreement are required to be obligated by the Government on or before September 30, 2016. Funds made available under this Agreement, once obligated, are available for liquidation and adjustment through September 30, 2021, the “Grant Termination Date.” Unless otherwise agreed to by the parties, this Agreement shall terminate on the Grant Termination Date.

c) Either party (the Government or the Recipient) may seek to amend or modify this Agreement prior to the Grant Termination Date by written notice (formal letter) to the other party and in accordance with 2 C.F.R. sections 200.388 and 200.399. The Grant Agreement may be amended or modified only on the mutual written agreement by both parties. Changes to **Attachment 2** (Estimated Project Schedule and Approved Project Budget) do not require modification through the process in this paragraph if such modifications do not affect the dates or amounts in sections 4(c)(5) and 4(d)(3) of **Attachment 1** of this Agreement, and the change has been consented to by the Government in writing consistent with the requirements of the administering Operating Administration (including by e-mail).

SECTION 14. QUARTERLY PROGRESS REPORTING REQUIREMENTS—FORMAT AND CONTENT

a) The purpose of the calendar quarterly progress reports under the Agreement for the FY 2014 TIGER Discretionary Grants program is to ensure that the project budget and schedule will be maintained to the maximum extent possible, that the project will be completed with the highest degree of quality, and that compliance with Federal regulations will be met. To that end, along with the quarterly progress, as outlined below, the Recipient should also submit a Federal Financial Report (SF-425) with each quarterly progress report.

b) The Recipient should develop a project reporting and tracking system to collect, assess and maintain project status information and data that is timely, independent, and accurate. This system should provide current information on project prosecution, progress, changes, and issues. This information should be used to identify trends and forecast project performance and to identify and proactively address challenges to eliminate major project surprises.

c) The need to continuously and accurately report cost increases; schedule changes; deficient quality items; and the causes, impacts, and proposed measures to mitigate these issues is paramount to effectively managing, administering, and protecting the public investment in the

project. Any apparent reporting deficiencies or questionable data should be completely resolved. Ultimately, the Recipient and the Government must be fully aware of the complete status of the project, and therefore be in a position to take appropriate action if necessary.

d) A quarterly cost, schedule, and status report will be produced by the Recipient, and a quarterly status meeting will be held with the Recipient, the Government and other applicable agencies in attendance. The quarterly status meetings should discuss the project costs, schedules, quality issues, compliance with Federal requirements, and other status items in sufficient detail to allow all involved parties to be fully aware of the significant status issues and actions planned to mitigate any adverse impacts. In addition, significant issues occurring between status meetings must be communicated immediately without waiting for the next regularly scheduled meeting, with any highly significant or sensitive issues elevated immediately to the executive leadership.

e) The following is the required format for the quarterly progress reports. At the discretion of the Government, modifications or additions can be made in order to produce a quarterly reporting format that will most effectively serve both the Recipient and the Government. It is recognized that some projects will have a more extensive quarterly status than others. In the case of smaller projects, the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. Please note that the initial quarterly progress report should include a detailed description, and where appropriate, drawings, of the items funded.

(1) Executive Summary. The executive summary should be a clear and concise summary of the current status of the project, including any major issues that have an impact on the project's scope, budget, schedule, quality, or safety. It may be done in a bulleted format. The following summary information is an example of items that should be covered in the executive summary section:

- Current total project cost (forecast) vs. latest budget vs. baseline budget. Include an explanation of the reasons for any deviations from the approved budget.
- Current overall project completion percentage vs. latest plan percentage.
- Any delays or exposures to milestone and final completion dates. Include an explanation of the reasons for the delays and exposures.
- A summary of the projected and actual dates for notices to proceed for significant contracts, start of construction, start of expenditure of TIGER Discretionary Grant funds, and project completion date. Include an explanation of the reasons for any discrepancies from the corresponding project milestone dates included in the Agreement.
- Any Federal obligations and/or TIFIA disbursements occurring during the month versus planned obligations or disbursements.
- Any significant contracts advertised, awarded, or completed.

- Any significant scope of work changes.
- Any significant items identified as having deficient quality.
- Any significant safety issues.
- Any significant Federal issues such as environmental compliance, Buy America/Buy American (whichever is applicable to this Project), Davis Bacon Act Prevailing Wage requirements, etc.

(2) Project Activities and Deliverables. The purpose of this section is to: (1) highlight the project activities and deliverables occurring during the previous quarter (reporting period), and (2) define the activities and deliverables planned for the next two reporting periods. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance. The two reporting period “look ahead schedule” will enable the Government to accommodate any activities requiring input or assistance.

(3) Action Items/Outstanding Issues. This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. In general, issues and administrative requirements that could have a significant or adverse impact to the project’s scope, budget, schedule, quality, safety, and/or compliance with Federal requirements should be included. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.

(4) Project Schedule. An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and the Government. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and

significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.

- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(5) Project Cost. An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.
- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or TIFIA disbursements for the project, compared to planned obligations and disbursements.

(6) Project Funding Status. The purpose of this section is to provide a status report on the non-TIGER Discretionary Grant funds necessary to complete the project. This report section

should include a status update of any legislative approvals or other actions necessary to provide the non-TIGER Discretionary Grant funds to the project. Such approvals might include legislative authority to charge user fees or set toll rates, or the commitment of local funding revenues to the project. In the event that there is an anticipated or actual project cost increase, the project funding status section should include a report on the anticipated or actual source of funds to cover the cost increase and any significant issues identified with obtaining additional funding.

(7) Project Quality. The purpose of this section is to: (1) summarize the Quality Assurance/Quality Control activities during the previous month (reporting period), and (2) highlight any significant items identified as being deficient in quality. Deficient items noted should be accompanied by reasons and specifics concerning the deficiencies, and corrective actions taken or planned. In addition, the agency or firm responsible for the corrective action should be documented. Planned corrective actions should then be included as Action Items/Outstanding Issues.

(8) Federal Financial Report (SF-425). The Federal Financial Report (SF-425) (available at http://www.whitehouse.gov/sites/default/files/omb/assets/grants_forms/SF-425.pdf) is a financial reporting form used throughout the Federal Government Grant system. Recipients should complete this form and attach it to each quarterly Project Progress and Monitoring Report.

(9) Other Status Reports. The Recipient and the Government may agree that other reports may be beneficial in ensuring that project status issues are fully and openly communicated. Such reports may include the public relations plan, value engineering and constructability review plan, environmental compliance report, and/or compliance with the Buy America requirements.

Attachment 2
STATEMENT OF WORK
The Southwest Chief Route Improvement Project

1.0 BACKGROUND

The Southwest Chief is a popular AMTRAK long-distance passenger service between Chicago, IL and Los Angeles, CA operating on rail line owned by the BNSF Railway. A segment of the existing Southwest Chief route operates over the BNSF Railway's La Junta Subdivision in Kansas and eastern Colorado where freight traffic levels no longer justify the investment required to maintain the rail infrastructure at FRA Class IV standards for passenger rail train operating speeds. The condition of the rail infrastructure has deteriorated over the past several years and, without the TIGER Grant infrastructure rehabilitation project that includes the installation of 136 pound continuous welded rail, the infrastructure will continue to erode to the point where operation of the AMTRAK Southwest Chief passenger rail service will not be feasible. Due to multiple slow orders along the route in Kansas the top operating speed for the Southwest Chief has been dropped to 50 mph. In March 2015 the On Time Performance (OTP) for the Southwest Chief was 38.7%. Track conditions accounted for 33.7% of train delays.

The Southwest Chief provides critical passenger transportation needed for rural communities in Kansas and Colorado. There is broad local, regional and national support for the Southwest Chief. Garden City, along with other local communities and county governments in both Kansas and Colorado, the Kansas Department of Transportation, BNSF Railway and AMTRAK have made financial contributions totaling \$9,300,000 (42.7% of total project costs), to be used in conjunction with this TIGER Grant, towards the improvement of the track infrastructure as detailed in item 4.0 – Description of Work.

2.0 GENERAL OBJECTIVE

The Grantee, in coordination with the Kansas Department of Transportation, BNSF Railway and AMTRAK will engage in a project that will entail the purchase and installation of approximately 495,200 linear feet of new 136 pound standard carbon welded rail, including related other track material and associated consumables between Mile Post 391.00 and 530.161 on BNSF Railway's La Junta Subdivision. This new rail will replace bolted rail on the existing route that no longer accommodates the movement of Amtrak Trains 3 and 4 (Southwest Chief) at Class IV operating speeds, and with the reliability and ride quality commensurate with Amtrak service expectations. These track improvements will allow the Southwest Chief to return to a 79 mph operating speed on the improved track segment. Completion of this project will provide a railroad facility that will improve the utility of intercity passenger railroad operations by improving ride quality and allowing for increased passenger speeds.

3.0 PROJECT LIMITS

Work will be undertaken on BNSF Railway's La Junta Subdivision between mile posts 391.000 just east of Garden City, KS and 530.161 near Las Animas, CO.

4.0 DESCRIPTION OF WORK

The project will replace approximately forty-five miles of bolted rail with new 136 rail (continuous welded rail, CWR), as well as other track materials, on the La Junta Subdivision between MP 391.000 and MP 530.161, and restore approximately 10 miles of previous spot repairs made with CWR at associated locations within the project parameters. Approximately twenty-three (23) turnouts will be replaced, 1,050 tons of ballast applied, and approximately twelve (12) at-grade crossings repaired and restored. The majority of the new rail will be installed in Kansas (approximately 40 miles) with approximately five (5) miles incorporated with existing CWR just east of Las Animas, Colorado (between MP 524.979 and MP 530.161). The track rehabilitation creates approximately 50 miles of rail to be maintained at FRA Class IV standards. All project work is in existing ROW and along the existing Southwest Chief Route.

Work being undertaken is considered major rehabilitation/rail replacement within existing railroad right-of-way. Project work will be consistent with BNSF Railway design standards and construction protocols and procedures, all in accordance with BNSF Railway Engineering Instructions and Standards. Upon completion of work, the improved track will meet FRA Class IV standards for maximum 80 mph passenger rail service.

All design construction work supporting the project will be provided directly by BNSF Railway. The Grantee will not engage in competitive contract procurement. The Project is broken down into three Tasks:

Task 1: Engineering

1.1: Preliminary Engineering:

Grantee will prepare and deliver to FRA a Preliminary Engineering (PE) Set Including:

- A condition assessment and annotated set of track charts identifying: rail, tie and ballast work items; location and sizes of all turnouts and proposed turnouts, with indication of whether they are manually operated or remotely controlled; and locations of all at-grade crossings identified by USDOT ID number;
- Scaled drawings for any newly sized or located turnouts or at-grade crossing modifications, as needed;
- Revised project cost estimate and project schedule as a result of Preliminary Engineering efforts.

The Grantee shall submit the required PE Set, with all stakeholder signatures, for FRA review and approval. Pending FRA approval of the PE Set, the Grantee may enter into the Final Design stage in which the PE Set Deliverable will be updated, if necessary.

Task 2: Construction:

2.1: Rail Relay

Replace approximately 45 miles of jointed rail with new 136 pound CWR and associated other track material between MP 391 and MP 530.161

2.2: Turnout Replacement

Replace approximately 23 turnouts, including spot surfacing, between MP 401.142 to 469.53

2.3: Grade Crossings Repair

Repair of approximately 12 grade crossings impacted by rail and turnout replacement, including spot surfacing

Task 3: Project Administration

3.1: Detailed Project Work Plan, Schedule and Budget

The Grantee shall prepare and submit to the FRA a Detailed Work Plan. The objective of a Detailed Work Plan is to provide details on tasks and subtasks identified in the Statement of Work. Specifically, the Detailed Work Plan describes, in detail, the steps to be taken by the Grantee to implement the Project and provides a budget and schedule to match the scope of work to be completed. The Grantee should update the Detailed Work Plan as new and more accurate data related to budget, schedule, financing, and freight traffic estimates become available, as applicable.

3.2: Project Management Plan

The Grantee shall develop a Project Management Plan (PMP). A PMP is the Grantee's overarching Project implementation plan that spans the entire period of the Project. It should describe a Grantee's approved policies, practices, and procedures related to the management, design, and construction.

Grantee activities supporting Administration of the award, including but not limited to preparation of all required reports, preparation/submission of any necessary supporting stakeholder agreements, and preparation/submission of project invoices for reimbursement fall under the Project Administration Task.

5.0 PROJECT SCHEDULE

The period of performance for the project will run from September 2015 through April, 2017. Work on the project will begin at MP 391.000 just east of Garden City, KS and proceed west to MP 530.161 near Las Animas, CO.

6.0 PROJECT ESTIMATE/BUDGET

The total estimated cost of the project is \$21,769,963, for which the FRA grant will contribute an estimated 57.3% of the total cost, but no more than \$12,469,963. Match funds, in the amount of \$9,300,000 will be provided by Garden City and other local units of government in Kansas and Colorado, BNSF Railway, AMTRAK and the Kansas Department of Transportation.

6.1 Funding Sources

Funding Source	Funding Amount
FRA Grant Award/Federal Share	\$ 12,469,963
Kansas Department of Transportation	\$ 3,000,000
BNSF Railway	\$ 2,000,000
AMTRAK	\$ 4,000,000
Local Units of Government in Kansas and Colorado	\$ 300,000
Project Total	\$ 21,769,963

6.2 Cost Summary

Task #	Task Name	FRA SCC				Budget	FRA	Non-Federal
		Track Structures and Track	Sitework, Right-of-Way, Land, Existing Improvements	Professional Services	Unallocated Contingency		57.2806%	42.7194%
1.1	Planning and Administrative	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2.1	Rail Relay Material and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment, and Leasing of Vehicles)	\$16,551,262	\$0	\$0	\$0	\$16,551,262	\$9,434,219	\$7,117,043
2.2	Switches/Turnouts and Materials and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment, and Leasing of Vehicles)	\$4,464,009	\$0	\$0	\$0	\$4,464,009	\$2,554,485	\$1,919,524
2.3	Task 2.3: Grade Crossings Improvements and Materials and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment and, Leasing of Vehicles)	\$754,692	\$0	\$0	\$0	\$754,692	\$491,259	\$263,433
3	Project Administration	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Project Total		\$21,769,963	\$0	\$0	\$0	\$21,769,963	\$12,469,963	\$9,300,000

FRA hereby authorizes the incurrence of pre-agreement costs by the Grantee on or after August 1, 2015, in anticipation of the execution of this Grant Agreement, but such costs are allowable only to the extent that they are otherwise allowable under the terms of this Agreement.

7.0 DELIVERABLES

The Grantee shall provide FRA with a projected schedule to achieve the deliverables and performance objectives listed below. The Grantee shall achieve these performance objectives in order to be authorized for funding of project components, and for the project to be considered complete.

Task	Deliverable	Due Date
Task 1	Preliminary Engineering Set	10/31/2015
Task 3	Detailed Project Work Plan, Schedule and Budget	09/30/2015
Task 3	Project Management Plan	09/30/2015
Task 3	Stakeholder Agreements	09/30/2015
Task 3	Final Project Report	2/28/2017

8.0 ENVIRONMENTAL DETERMINATION

FRA issued a Categorical Exclusion covering the scope of this Project on June 04, 2015.

9.0 PROJECT COORDINATION

Major partners involved with project coordination include: Garden City, KS (Grantee); Kansas Department of Transportation; BNSF Railway; AMTRAK; and the FRA. The Grantee (Garden City, KS), in coordination with KDOT, will facilitate project activities with the BNSF Railway who will be providing all work related activities associated with the Project. In addition to the FRA Grant Agreement, a City/State Agreement between Garden City and KDOT, as well as a Construction and Maintenance Agreement between Garden City and BNSF Railway will be in place prior to the commencement of construction work on the Project.

The Grantee shall perform all tasks required for the project through a coordinated process, including all railroad owners, operators, and funding partners within the project area. Partners involved with the project include:

- Garden City, KS (Grantee)
- Kansas Department of Transportation
- BNSF Railway
- AMTRAK
- Local Funding Match Contributors: Dodge City, KS; Hutchinson, KS; Newton, KS; La Junta, CO; Lamar, CO; Trinidad, CO; Bent County, CO; Las Animas County, CO; Otero County, CO; Prowers County, CO; Pueblo County, CO; Colorado's I-25 Coalition; and the Colorado Rail Passenger Association
- FRA

10.0 PROJECT MAINTENANCE

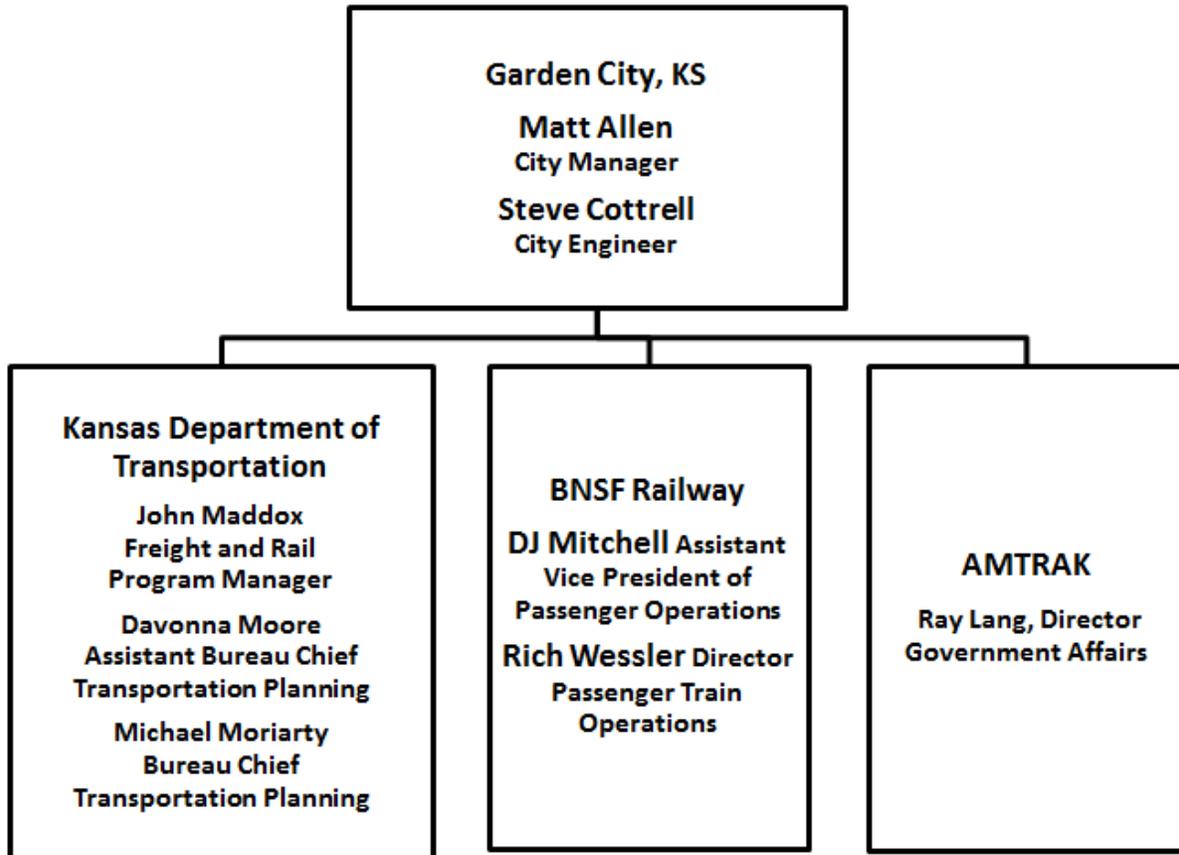
The Grantee shall make all reasonable efforts to enforce the agreement to maintain the infrastructure funded by this investment to a level necessary to sustain the requirements as set forth in the Terms and Conditions concerning this Project, including any maintenance required to maintain the new maximum passenger train speeds through the project area. Since the infrastructure funded by this investment is on a route owned by BNSF and served only by a long-distance passenger train (not

sponsored by the State and not subject to Section 209 of the Passenger Rail Investment and Improvement Act of 2008), and the Grantee is therefore dependent on BNSF as the owner and Amtrak as the long-distance operator for operation and maintenance of passenger rail service on this route, the failure to maintain the infrastructure funded by this investment will not trigger any repayment obligations under this Cooperative Agreement, provided that the Grantee has made all reasonable efforts to enforce the agreement to maintain the infrastructure funded by this investment to a level necessary to sustain the benefits set forth in the Performance Measurements concerning this Project, including any maintenance required to maintain the new maximum passenger train speeds through the project area.

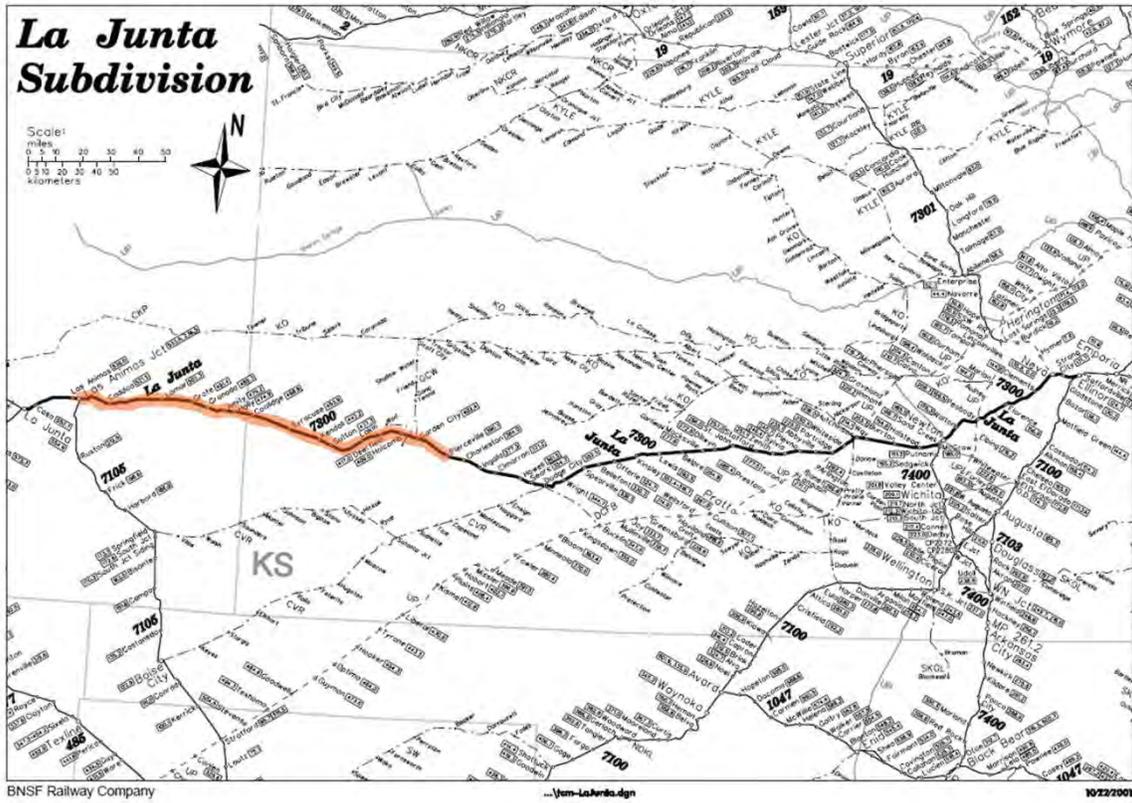
SERVICE DISCONTINUANCE

The Grantee acknowledges that the purpose of the Project is to benefit intercity passenger rail service on a long-distance route currently operated by the Amtrak. In the event that all intercity passenger rail service making use of the Project property is discontinued (for any reason) at any time during a period of 20 years from the date such Project property was placed in service, as set forth above, and if such intercity passenger rail service is not reintroduced during a 1-year period following the date of such discontinuance, the Grantee agrees that it will make all reasonable efforts to enforce its agreement with BNSF that BNSF will continue to make the Project property and the rail line associated therewith within the State available for use, in accordance with applicable law, by Amtrak or any Permitted Amtrak Successor, for the remainder of the 20-year period, and that the Grantee will actively seek to reintroduce and establish an intercity passenger rail service on the Project property and the rail line associated therewith.

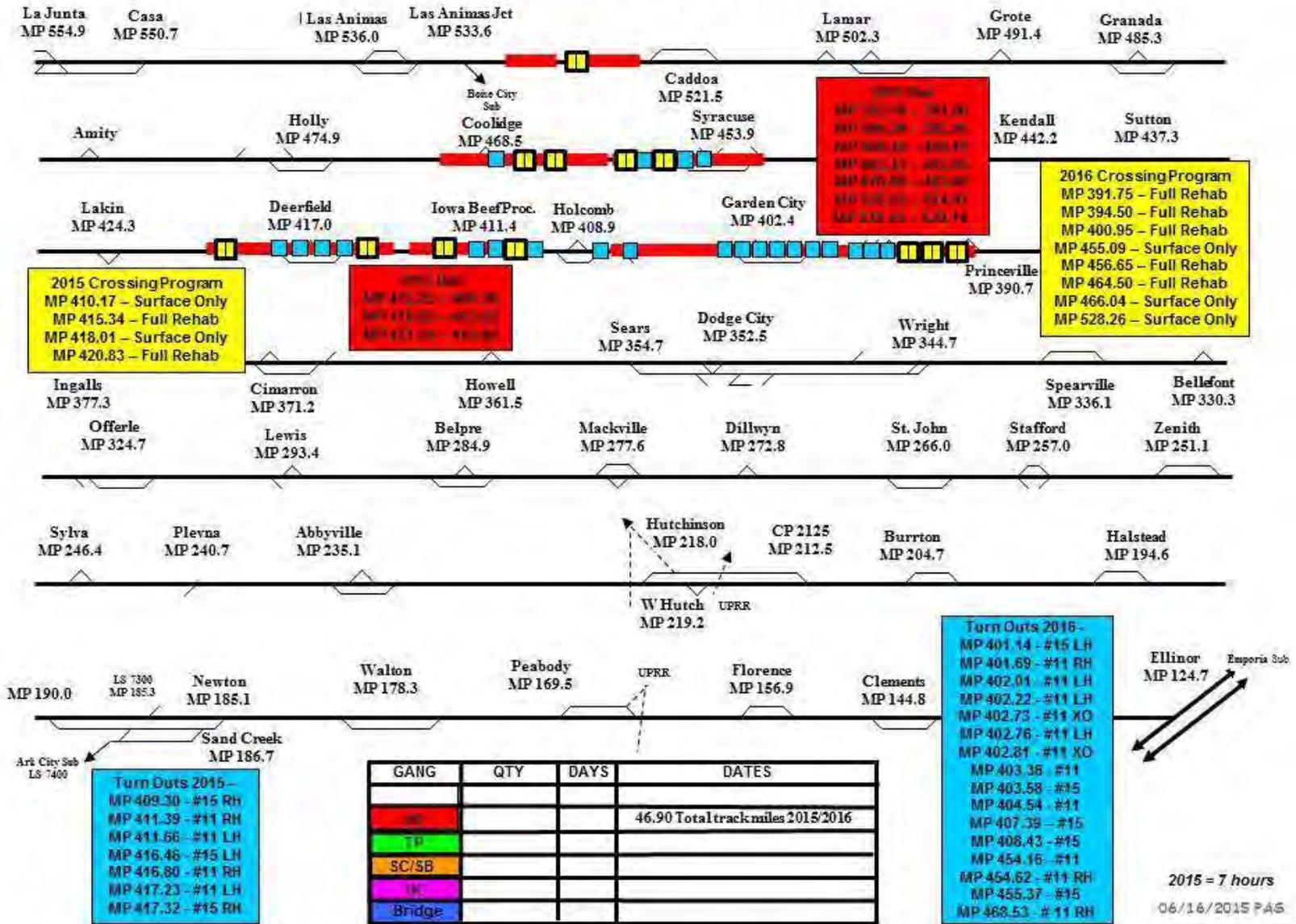
The Southwest Chief Route Improvement Project Management Team



The Southwest Chief Route Improvement Project Project Map



La Junta Sub Tiger Funding



Detailed Work Plan - Budget - FRA Standard Cost Categories

Award Number: _____
FRA Program: TIGER

Recipient Name: The City of Garden City, Kansas
Project Name: The Southwest Chief Route Improvement Program

Task #	Task Name / Subtask #	Subtask Name/Activity	FRA Standard Cost Categories										Authorized Amount			
			Track Structures & Track	Stations, Terminals, Intermodal	Support Facilities: Yards, Shops, Admin. Buildings	Sitework, Right-of-Way, Land, Existing Improvements	Communications & Signaling	Electric Traction	Vehicles	Professional Services	Unallocated Contingency	Finance Charges	FRA Share	Grantee Match	Total	
1	Task 1: Preliminary Engineering															
	1.1	Preliminary Engineering (PE) Set	\$ -											\$ -	\$ -	\$ -
2	Task 2.1: Rail Relay															
	2.1	Replace approximately 45 miles of jointed rail with new 136 pound CWR and associated other track material between MP 391 and MP 530.161	\$ 16,551,262											\$ 9,434,219	\$ 7,117,043	\$ 16,551,262
2	Task 2.2: Turnout Replacement															
	2.2	Replace approximately 23 turnouts, including spot surfacing, between MP 401.142 to 469.53	\$ 4,464,009											\$ 2,544,485	\$ 1,919,524	\$ 4,464,009
2	Task 2.3: Grade Crossing Repair															
	2.3	Repair approximately 12 grade crossings impacted by rail and turnout replacement, including spot surfacing	\$ 754,692											\$ 491,259	\$ 263,433	\$ 754,692
3	Task 3: Project Administration		\$ -											\$ -	\$ -	\$ -
Total			\$ 21,769,963										\$ 12,469,963	\$ 9,300,000	\$ 21,769,963	

**ATTACHMENT 4
PERFORMANCE MEASUREMENT TABLE**

Subject to the Paperwork Reduction Act, as necessary, the Grantee agrees to (i) collect the data necessary to track and report on each of the performance measures identified in the Performance Measure Table included below in this SOW and (ii) report the results of such data collection to the Federal Government. The Grantee should include the data collected for each measure in each required report. To satisfy the reporting requirements, the Grantee agrees to provide “Preproject” and “Performance Reports”.

Preproject reports should include current baseline data for each performance measure and should be delivered to the Government before project completion. Preproject reports should include a detailed description of data sources, assumptions, variability, and the estimated level of precision for each measure.

The Grantee should provide Performance Reports for each performance measure following Project completion at the intervals, and for the time periods, specified in the Performance Measure Table included below. Performance reporting may include a narrative discussion detailing Project successes and/or the influence of external factors on Project expectations. The final “Project Outcomes” report must include a post completion examination of Project effectiveness in relation to Preproject baselines.

Study Area:

The study area consists of BNSF Railway’s La Junta Subdivision between mile posts 391.000 just east of Garden City, KS and 530.161 near Las Animas, CO.

Reporting:

Measure	Description of Measure	Measurement Period	Reporting Period
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Measure	Description of Measure	Measurement Period	Reporting Period
<p>Measure 1: FRA Track Classification</p>	<p>FRA Track Classification establishes track quality rating and maximum allowable operating speed.</p>	<p>Pre-project (Baseline) Measurement: Certification of Track Classification year prior to initiating work under this Agreement.</p> <p>(After) Project Performance Measurement: Yearly for a period of 3 years after the project opens for operation under normal conditions.</p>	<p>Pre-Project (Baseline) Measurement: Reporting period is 1 year prior to initiating work under this Agreement. Report is due by December 31, 2015.</p> <p>(After) Project Performance Measurement: Annually for a period of 3 years, starting 1 year after project completion, submitted by March 1 annually.</p>
<p>Measure 2: Slow Order Minutes</p>	<p>Annual number of minutes under slow order restrictions due to rail condition (ie: Speed on a rail line below normal speed limit for line, or normal speed for service).</p>	<p>Pre-Project (Baseline) Measurement: Annual average for one year prior to initiation of construction (reported for project area only).</p> <p>(After) Project Performance Measurement: Annually for a period of 5 years after the project opens for operation under normal conditions.</p>	<p>Pre-Project (Baseline) Measurement: Reporting period is 1 year prior to initiating work under this Agreement. This report is due by December 31, 2015.</p> <p>(After) Project Performance Measurement: Annually for a period of 5 years, starting 1 year after project completion, submitted by March 1 annually.</p>

Attachment 5

TIGER 2014 GRANT

ASSURANCES AND CERTIFICATIONS

ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

During the performance of this Grant/Cooperative Agreement, the Grantee, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities (as applicable to this grant); including but not limited to:

Potentially Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); 49 CFR Part 21; and 28 C.F.R. section 50.3. The Grantee will comply with the specific assurances following this section, entitled Title VI Assurances and Non-Discrimination Provisions
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS

The Grantee will ensure that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Grantee receives Federal financial assistance from DOT, including the Federal Railroad Administration.

The Civil Rights Restoration Act of 1987 clarified that the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these nondiscrimination statutes and requirements to include all programs and activities of the Grantee, so long as any portion of the program is Federally assisted.

The Grantee agrees that each “activity,” “facility,” or “program,” as defined in sections 21.23(b) and 21.23(e) of 49 C.F.R. 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulation.

The Grantee will insert the following notification in all solicitations, bids, Requests for Proposals for work, or materials subject to the Acts and the Regulations made in connection with TIGER 2014 Discretionary Grants program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The [name of Grantee], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. sections 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to

submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

The Grantee will ensure that the following provisions are included in every contract or agreement subject to the Acts and the Regulations:

1. Compliance with Regulation. The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Railroad Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-Discrimination. The contractor, with regard to the work performed by it during the contract will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. Solicitation for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color or national origin.
4. Information and Reports. The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Grantee or the Federal Railroad Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Grantee or the Federal Railroad Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance. In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Grantee will impose such contract sanctions as it or the Federal Railroad Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the contractor under the contract until the contractor complies; and/or (b) canceling, terminating, or suspending a contract, in whole or in part.
6. Incorporation of Provisions. The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Acts, the Regulations, and the directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Grantee or the Federal Railroad Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Grantee to enter into any litigation to protect the interests of the Grantee. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

The Grantee agrees that where it receives Federal financial assistance to construct a facility, or part of a facility, these assurances will extend to the entire facility and facilities operated in connection therewith.

The Grantee agrees that where it receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, these assurances will extend to rights to space on, over, or under such property.

The Grantee agrees that these assurances obligate the Grantee for the period during which Federal financial assistance is provided, or is in the form of, personal property, or real property, or interests therein, or structures or improvements thereon, in which case the assurances obligate the Grantee, or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Grantee retains ownership or possession of the property.

The Grantee will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegated specific authority to give reasonable guarantees that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations and these assurances.

The Grantee agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, or these assurances.

The Grantee agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the DOT and/or FRA access to records, accounts, documents, information, facilities, and staff. The Grantee also agrees that it must comply with any program or compliance reviews, and/or complaint investigations conducted by DOT and/or FRA. The Grantee agrees to keep records, reports, and submit the material for review upon request to the DOT and/or FRA, or its designee in a timely, complete, and accurate way. The Grantee also agrees to comply with all reporting,

data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

These assurances are binding upon the Grantee, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the TIGER 2014 Discretionary Grants program.

DISCLOSURE OF LOBBYING ACTIVITIES

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2014 Discretionary Grants program, the Grantee hereby agrees that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subgrantees shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN THE PERFORMANCE OF THE TIGER III DISCRETIONARY GRANT PROGRAM

The Grantee certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Grantee's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of the commitments made in this certification.
8. The Grantee may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Grantee does so, please provide the following written information:

(a) Identify the places of performance by listing the street address, city, county, state, zip code and,

(b) Identify if there are workplaces on file that are not identified in the Agreement.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Part 1200, 49 C.F.R. Part 32

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2014 Discretionary Grants program, the Grantee is providing the assurance and certification set out below.

1. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
2. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
3. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant

learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. See Nonprocurement Suspension and Debarment (2 C.F.R. Part 1200) and Government wide Requirements for Drug-Free Workplace Grants (49 C.F.R. Part 32). The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

5. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters --
Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2014 Discretionary Grants program, the Grantee is providing the assurance and certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of 2 C.F.R parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations exceeding the \$25,000 threshold.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the General Services Administration's System for Award Management at <https://www.sam.gov>.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion -- Lower Tier Covered Transactions

By signing and submitting the Technical Application and by entering into the Agreement under the TIGER 2014 Discretionary Grants program, the Grantee is providing the assurance and certification set out below.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION REGARDING UNIVERSAL IDENTIFIER AND SYSTEM OF AWARD MANAGEMENT

2 C.F.R. Section 25.220 – Appendix A

I. System of Award Management and Universal Identifier Requirements

A. Requirement for System of Award Management (SAM)

Unless the Grantee is exempted from this requirement under 2 CFR 25.110, the Grantee, as the Recipient, must maintain the currency of the Grantee's information in the SAM until the Grantee submits the final financial report required under this award or receives the final payment, whichever is later. This requires that the Grantee reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the Grantee's information or another award term.

B. Requirement for unique entity identifiers

If the Grantee is authorized to make subawards under this award, the Grantee:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this certification) may receive a subaward from the Grantee unless the entity has provided its unique entity identifier to the Grantee.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to the Grantee.

C. Definitions

For purposes of this certification:

1. System of Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;

- c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward:
- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Grantee received this award and that the Grantee, as the recipient, awards to an eligible subrecipient.
 - b. The term does not include the Grantee's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.330).
 - c. A subaward may be provided through any legal agreement, including an agreement that the Grantee considers to be a contract.
5. Subrecipient means an entity that:
- a. Receives a subaward from the Grantee under this award; and
 - b. Is accountable to the Grantee for the use of the Federal funds provided by the subaward.

PROJECT NO. 106 KA-4108-01

TIGER GRANT PROJECT
CITY OF GARDEN CITY, KANSAS

AGREEMENT

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Garden City, Kansas** (“City”), **collectively**, the “Parties.”

RECITALS:

- A. The City applied to the U.S. Department of Transportation for and was awarded a TIGER Grant to restore and upgrade rail facilities to improve travel for Amtrak’s Southwest Chief Route and has entered into a TIGER Grant Agreement between the City and the Federal Rail Administration to receive and administer the grant.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of projects utilizing federal funds and the Secretary may assist cities in the administration of these types of projects.
- C. The Secretary is empowered by the laws of Kansas to make loans or grants to a railroad for the purpose of facilitating the financing, acquisition, or rehabilitation of railroads in the State of Kansas. Further, the Contractor is a qualified entity as that term is defined in K.S.A. § 75-5048(h) and K.A.R. § 36-39-2 eligible to receive funding from the RSIF.
- D. The Secretary desires to assist the City in certain aspects of the administration of the TIGER Grant and to contribute state funds toward the Project being partially funded by the grant.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions.

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

1. “**Agreement**” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. “**Amtrak**” means Amtrak (National Railroad Passenger Corporation) with its place of business at 60 Massachusetts Avenue, NE, Washington DC, 20002.
3. “**AREMA**” means the American Railway Engineering and Maintenance of Way Association.
4. “**BNSF**” means BNSF Railway Company, with its principal place of business at 2650 Lou Menk Drive, Fort Worth, TX 76131, and is a qualified entity as that term is defined in K.S.A. §75-5048(h) and K.A.R. § 36-39-2 eligible to receive funding from the RSIF.

5. **“City”** means the City of Garden City, Kansas, with its principal place of business at 301 N. 8th Street, Garden City, KS 67846.
6. **“City Project Monitor”** means the City Engineer, designated by the City to monitor progress of the Project.
7. **“Construction”** means the work done on the Project after Notice to Proceed, consisting of building, altering, repairing, rehabilitating, improving or demolishing any track structure or rail line; any drainage, dredging, excavation, grading or similar work upon real property; and dirt work, grading, rail spur construction, and rail switch installation.
8. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
9. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project.
10. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project, which may include BNSF.
11. **“Contractor”** means BNSF, which is the entity contracted by the City to perform the Construction for the Project, and who shall be responsible for maintenance of the Project.
12. **“Contractor Agreement”** means the agreement dated _____ between the City and the Contractor, setting forth the terms and conditions for Construction of the Project by the Contractor.
13. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
14. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
15. **“FRA”** means the Federal Railroad Administration, an agency within the U.S. Department of Transportation.
16. **“Hazardous Waste”** includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final

Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.

17. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
18. **“Local Contributions”** means \$300,000, which represents the sum of contributions made by various entities, including the City, for the Project.
19. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf, reasonably determines are not Participating Costs.
20. **“Notice of Acceptance”** means a written notification from the City, and upon concurrence with the Secretary, that the City has received certification from the FRA-certified track inspector, as well as any other certifications required in this Agreement and the TIGER Grant Agreement, that the Project has been completed in compliance with the TIGER Grant Agreement, Design Plans, specifications, and applicable standards and that the City accepts the Construction of the Project as completed in accordance with the requirements of this Agreement.
21. **“Notice to Proceed”** means a written notification from the City, after concurrence by the Secretary, that the Contractor is authorized to proceed with the Project.
22. **“Participating Costs”** means expenditures for items or services which are an integral part of railroad construction projects, as reasonably determined by the Secretary.
23. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
24. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, performed by or for BNSF that takes place before Construction.
25. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the City, as and when Notice to Proceed is issued by the City, being **Construction on the BNSF Railway La Junta Subdivision from Mile Post 391.000 to Mile Post 468.530 in Kansas and Mile Post 524.979 and Mile Post 530.161 in Colorado**. The Project will replace approximately forty-five (45) miles of bolted rail with new 136 or 141 pound relay rail (continuous welded rail, [CWR]) on the BNSF La Junta Subdivision. Approximately twenty (20) turnouts will be replaced, one thousand and fifty (1,050) tons of ballast applied and twelve (12) at-grade crossings will be repaired and restored. This Project is generally described as The Southwest Chief Route Improvement Project as set forth in the TIGER Grant Agreement, and is the subject of this Agreement.
26. **“Project Cost”** means \$21,769,963, which represents the total estimated cost of the Project, as detailed in Attachment _____ of the TIGER Grant Agreement.

27. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
28. **“Rail and Freight Unit”** means the department within KDOT primarily responsible for rail matters, which is contacted by notice to John Maddox, Rail/Freight Manager, KDOT, 700 SW Harrison Street, Topeka, KS 66603.
29. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
30. **“RSIF”** means the rail service improvement fund established in the Kansas State Treasury pursuant to K.S.A. § 75-5048(c) for the purpose of facilitating the financing, acquisition, and rehabilitation of railroads and rolling stock in the State of Kansas.
31. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors, or the Secretary’s duly authorized designee.
32. **“TIGER Grant”** means the federal funding granted to the City by the U.S. Department of Transportation (“U.S. DOT”) under the Transportation Investment Generating Economic Recovery discretionary grant program in the American Recovery and Reinvestment Act of 2009, pursuant to which the U.S. DOT acting through the FRA will enter into a TIGER Grant Agreement with the City in the amount of \$12,469,963 for Construction of the Project.
33. **“TIGER Grant Agreement”** means the Grant/Cooperative Agreement dated _____ between the City and FRA, setting forth terms and conditions under which the City, as grantee, will be responsible for Construction of the Project in order to receive the TIGER Grant.
34. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

ARTICLE II

SECRETARY RESPONSIBILITIES:

1. **Technical Information.** The Secretary will provide technical information and administrative assistance for the Project, upon request by the City to the Rail and Freight Unit, and to the extent the Secretary determines, in his discretion, is reasonable, including the following anticipated types of assistance:

- (a) if the TIGER Grant Agreement is not fully executed by the Effective Date of this Agreement, preparation of portions of the TIGER Grant Agreement such as the

Construction Engineering worksheet, performance measures, and the Project scope of work, budget, and timeline; and

(b) following Notice to Proceed, review of invoices submitted by the Contractor, progress reports prepared by the City Project Monitor, and performance measure data reports prepared by the City.

2. **Secretary's Responsibility for Costs.**

(a) **Costs within Project Cost.** The Secretary agrees to be responsible for up to three million dollars (\$3,000,000.00) of the costs within the Project Cost (which includes the costs of all Construction Contingency Items) and Construction Engineering, except as set forth in Article II, paragraph 2(b). The Secretary will remit its \$3,000,000 grant contribution to the City within thirty (30) days of the Effective Date, provided that in no event will the Secretary remit any portion of its contribution until after: (i) the TIGER Grant Agreement has been fully executed by all parties to that agreement; (ii) the Contractor Agreement has been fully executed by all parties to it and the Contractor Agreement is in conformity with this Agreement containing all language required by this Agreement and appropriate to carry out the intent of this Agreement; and (iii) the City is in possession of all Local Contributions as well as Amtrak's \$4,000,000 contribution toward this Project. The Secretary shall have no responsibility to remit the \$3,000,000 grant contribution until the Secretary has confirmed all the events in the preceding sentence have transpired, even if such confirmation is later than thirty (30) days after the Effective Date.

(b) **Overages.** In the event the costs of the Project exceed the Project Cost, the Secretary agrees to be responsible for 40% of the total actual overage costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering above the Project Cost, but not to exceed \$435,399.

3. **Preliminary Engineering, Right of Way, and Utilities.** The Secretary shall not be responsible for the Preliminary Engineering, Right of Way, or Utility adjustments for the Project. Nor shall the Secretary be responsible for the total actual costs of Preliminary Engineering, Right of Way, or Utility adjustments for the Project.

ARTICLE III

CITY RESPONSIBILITIES:

1. **Primary Responsibility.** The City, as the grantee in the TIGER Grant Agreement, shall be primarily responsible for all obligations and responsibilities imposed by the TIGER Grant Agreement.

2. **Legal Authority.** The City agrees to adopt all necessary ordinances and/or resolutions and to take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

3. **Payment Processing.**

(a) Holding and Disbursal of KDOT's Contribution. The City agrees to be responsible to hold KDOT's \$3,000,000 grant contribution and to disburse the contribution, and other project funds, pursuant to the payment procedure set forth in Article III, paragraph 3(b). In the event the final costs of the Project are less than the Project Cost, the City will return to the Secretary any amount remaining of KDOT's contribution after the final review of the Project costs and final billing and payment under Article III, paragraph 3(c).

(b) Payments to Contractor. The City agrees to be responsible for issuing payments to the Contractor for the total actual costs of Construction (which includes the costs of all Construction Contingency Items) and Construction Engineering, as set forth in the procedure below.

(i) Invoices for Actual Costs. The City shall only issue payment based upon submitted invoices, which are based on actual costs for the Project (including the costs of all Construction Contingency Items).

(ii) Invoicing Procedure. The City will only process invoices that it has approved as conforming to the requirements imposed by the TIGER Grant Agreement, and include an original invoice and two (2) copies of the original invoice, an invoice summary, and a request for reimbursement cover sheet itemizing the expenses incurred on the Project. Each invoice shall indicate materials paid for by the Contractor, the amount of work performed, and the total value of the work. The invoice should, to the extent practicable, reflect all expenditures for the period involved, identified by line item to be set forth in the Project Cost. The City will not issue payment for any invoice until after the Secretary has reviewed and provided written approval of the invoice.

(iii) Processing of Payments.

(A) Payments within Project Cost. Within thirty (30) days of approval of an invoice by the City and the Secretary, and provided the amount approved is within the Project Cost, the City will issue a payment to Contractor less 9.19% of the entire approved invoice amount. The 9.19% deduction represents \$2,000,000 in funding contributed by BNSF. The portion of the payment remaining after the 9.19% deduction will be comprised from the following sources: 18.37% representing Amtrak's responsibility; 13.78% representing the Secretary's responsibility; 1.38% representing the Local Contributions' responsibility; and 57.28% representing FRA TIGER Grant's responsibility. The City will seek reimbursement from FRA for the portion of the payment representing FRA TIGER Grant's responsibility.

(B) Payments for Overages. Upon written approval by the City and the Secretary of any change orders resulting in an invoice for an amount above the Project Cost, the Secretary will issue a payment to the City to the extent of the Secretary's responsibility set forth in Article II, paragraph 2(b).

within thirty (30) days of such approval. Upon receipt of such payment, the City will promptly make payment for the same amount to the Contractor.

(c) Final Review, Billing, and Payment. After issuance of the Notice of Acceptance, the City, in coordination with the Secretary, will, in a timely manner, prepare a complete and final review of all Project costs. If any costs, materials, and expenditures do not meet the requirements of this Agreement, the City will withhold from the final payment invoice an amount equal to such costs, materials, and/or expenditures. The City will seek reimbursement for the final billing and payment from FRA for the portion of the payment representing FRA TIGER Grant's responsibility. Any dispute in connection with the final review shall be referred to the Secretary, or his or her designee, for resolution.

4. Conformity with State and Federal Requirements. The City shall be responsible to design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with applicable AREMA standards, the TIGER Grant Agreement, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), and with the rules and regulations of the FRA pertaining to the Project.

5. Submission of Estimated Costs to Secretary. Prior to the City issuing the Notice to Proceed, it shall submit to the Secretary an itemization of estimated project costs as contained in the fully executed copy of the TIGER Grant Agreement.

6. Consultant Contract Language. The City shall include language requiring conformity with Article III, paragraph 4 above, in all contracts between the City and any Consultant with whom the City has contracted to perform services for the Project. In addition, any contract between the City and any Consultant with whom the City has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

(a) Completion of Design. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by the City, exclusive of delays beyond the Consultant's control.

(b) Progress Reports. Language requiring the Consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

(c) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Consultant. Such language shall read:

"Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract

obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement."

7. **Contractor Contract Language.** The City shall include language requiring conformity with this Agreement, and to carry out the intent of this Agreement, in the Contractor Agreement. In the Contractor Agreement, the City shall include the following language in addition to any other language identified in this Agreement.

(a) **Invoicing and Payment Processing.** The City shall include language requiring the Contractor to:

(i) submit invoices as required by the TIGER Grant Agreement and this Agreement, simultaneously to the City and the Secretary no more frequently than on a monthly basis;

(ii) agree to the payment processing procedure set forth in Article III, paragraph 3;

(iii) agree that the Secretary shall not have an obligation to pay any overage above the Project Cost that the Secretary has not agreed to pay in Article II, paragraph 2(b) and that the Contractor assumes full responsibility for any portion of any invoice not approved for reimbursement by FRA; and

(iv) follow all of the recordkeeping obligations set forth in Article III, paragraph 17, which are imposed on the City, however the City retains responsibility to the Secretary for such obligations in the event the Contractor does not fulfill its obligations under its contract with the City.

(b) **Responsibility for Adequacy of Design.** The City shall require the Contractor to be responsible for preparing Design Plans as needed for the Project in conformity with Article III, paragraph 4, above. Neither the Secretary, nor the City, makes any representation, or express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project.

(c) **Right of Way.** The City and Secretary acknowledge that the Project is being built within existing BNSF Right of Way, and that BNSF states that additional Right of Way is not required. The City will require the Contractor to obtain any additional Right of Way needed for the Project.

(d) **Utilities.** The City shall require the Contractor to be responsible for actions required by this Project related to Utilities, including: (i) identifying existing and known Utilities; (ii) moving, adjusting, and installing Utilities; and (iii) permitting of Utilities.

(e) **Access Control.** The City will require the Contractor to maintain the control of access rights and prohibit the construction or use of any entrances or access points along

the Project other than those shown on the final Design Plans, unless prior approval is obtained from the Secretary.

(f) Maintenance. The City shall ensure that the Contractor is responsible for maintaining and using the Project as set forth in the TIGER Grant Agreement.

(g) Financial Obligation. The City shall require the Contractor to undertake such responsibility to the City: (a) for 100% of the total actual costs of Preliminary Engineering, Right of Way, and Utility adjustments for the Project; (b) to pay for any Non-Participating Costs incurred for the Project along with the associated non-participating Construction Engineering costs; and (c) to pay (or not invoice for) overages above the Project Cost that the Secretary has not agreed to be responsible for under Article II, paragraph 2(b).

(h) Default by Contractor. The City shall include language that, in addition to any other remedies the Secretary might pursue, in the event of a breach and/or default by the Contractor, including not performing and/or fulfilling the maintenance and/or use obligations set forth in the TIGER Grant Agreement within a period of twenty (20) years from the date of the Notice of Acceptance, and unless such breach and/or default is excused by the Secretary in writing, the Secretary shall retain whatever equitable remedies that may be available, including but not limited to mandamus and/or specific performance. In the event of such a breach and/or default and Notice of Acceptance has not been issued, the Secretary may elect to have the Contractor pay the entire amount of the Secretary's grant contribution that the Contractor received in which case the Contractor will pay such amount. In the event of such a breach and/or default and Notice of Acceptance has been issued, the Contractor will pay to the Secretary the amount of the entire grant the Secretary paid to the Contractor reduced pro rata based on the number of months of the twenty-year period that have lapsed following the Notice of Acceptance.

(i) Third Party Beneficiary. Language making the Secretary a third party beneficiary in the agreement between the City and the Contractor. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Contractor. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Contractor failed to comply with its contract obligations under this Agreement or because of the Contractor’s negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Contractor as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

8. **Performance Bond**. The City and Secretary acknowledge that the Project is being completed by BNSF and that a performance bond is not required.

9. **Indemnification by Contractors.** The City agrees to contractually require the Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City, or both, incur in defending the claim.

10. **Notice to Proceed.** Upon the City's determination that the Contractor may proceed with Construction and the concurrence of the Secretary, the City will deliver to the Contractor the Notice to Proceed.

11. **Notice of Acceptance.** Upon the City's receipt of certification from the FRA-certified track inspector that the Project was completed in compliance with the TIGER Grant Agreement, this Agreement, Design Plans, applicable FRA track specifications, and applicable AREMA standards; and upon concurrence with the Secretary; the City will deliver to the Contractor the Notice of Acceptance.

12. **City Project Monitor.**

(a) **Project Review.** The City Project Monitor will receive and review certifications provided by the FRA certified inspector and keep any records of reviews performed during the Project period. The City Project Monitor shall periodically meet and confer with the Secretary's designee and the Contractor's supervisor of the Project to ascertain that the work being performed is in compliance with this Agreement, and shall report any instance of noncompliance or questionable work to the Rail and Freight Unit.

(b) **Change Orders.** The City Project Monitor will review any change orders requested by the Contractor for work related to the Project, and after approval by the City, the Secretary, and the FRA as necessary, authorize reasonable change orders.

(c) **Progress Reports.** The City Project Monitor will deliver to FRA any progress reports required pursuant to the TIGER Grant Agreement.

13. **Authorization of Signatory.** The City Project Monitor shall be authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

14. **Hazardous Waste.** Before using any KDOT right of way, the City, and/or the Contractor through its contractual obligations with the City, shall be required to request a permit through KDOT's standard highway right of way access permitting process and agree to the following with regard to Hazardous Waste:

(a) **Removal of Hazardous Waste.** The City shall locate and be responsible for remediation and cleanup of any Hazardous Waste discovered within the Project Limits. The City shall take appropriate action to cleanup and remediate any identified Hazardous Waste prior to Construction. The City will also investigate all Hazardous Waste discovered during Construction and shall take appropriate action to cleanup and remediate Hazardous Waste.

The standards to establish cleanup and remediation of Hazardous Waste include, but are not limited to, federal programs administered by the Environmental Protection Agency, State of Kansas environmental laws and regulations, and City and County standards where the Hazardous Waste is located.

(b) Responsibility for Hazardous Waste Remediation Costs. The City shall be responsible for all damages, fines or penalties, expenses, fees, claims and costs incurred from remediation and cleanup of any Hazardous Waste within the Project Limits which is discovered prior to Construction or during Construction.

(c) Hazardous Waste Indemnification. The City shall hold harmless, defend, and indemnify the Secretary, the Secretary's agents and employees from all claims, including contract claims and associated expenses, and from all fines, penalties, fees or costs imposed under state or federal laws arising out of or related to any act of omission by the City in undertaking cleanup or remediation for any Hazardous Waste.

(d) No Waiver. By signing this Agreement the City has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any Hazardous Waste on any Right of Way within the Project Limits. The City reserves the right to bring any action against any third party for any Hazardous Waste on any Right of Way within the Project Limits.

15. Inspections. The City is responsible to provide Construction Engineering for the Project in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the TIGER Grant Agreement. The detailed inspection is to be performed by a FRA certified inspector. The Secretary does not undertake for the benefit of the City, the Contractor, the Consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the Contractor's errors, omissions, or deviations from the final Design Plans. Neither the City nor the Secretary will enter BNSF Right of Way, for any purpose related to this Project, without being accompanied by BNSF personnel and in compliance with BNSF safety requirements; such accommodations shall not be unreasonably withheld. The City will require at a minimum all personnel, regardless of whether the personnel are employed by the City or others, performing Construction Engineering to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests and the railroad workplace safety requirements of 49 C.F.R. Part 214, as applicable. The agreement for inspection services must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

16. Traffic Control. Before crossing any State of Kansas highway, the City, or Contractor through its contractual obligations with the City, shall be required to request a permit through KDOT's standard highway right-of-way access permitting process, which shall cover the following with regard to traffic control for the Project:

(a) Temporary Traffic Control. The City shall require BNSF to provide a temporary traffic control plan within the Design Plans, which includes the plan for handling multi-modal traffic during Construction, including detour routes and road closings, if necessary, and installation of alternate or temporary pedestrian accessible paths to pedestrian

facilities in the public Right of Way within the Project Limits. The temporary traffic control plan must be in conformity with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD), as adopted by the Secretary, and be in compliance with the American Disabilities Act of 1990 (ADA) and its implementing regulations at 28 C.F.R. Part 35, and FHWA rules, regulations, and guidance pertaining to the same. The Secretary or the Secretary's authorized representative may act as the City's agent with full authority to determine the dates when any road closings will commence and terminate. The Secretary or the Secretary's authorized representative shall notify the City of the determinations made pursuant to this section.

(b) Traffic Movements. The arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may be safely and expeditiously served. The City shall adopt and enforce rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the FHWA.

17. **Recordkeeping**.

(a) General Record Retention. The City shall maintain its books, records, documents, and other evidence pertaining to all costs and expenses incurred in such detail as will properly reflect all net costs, labor, materials, equipment, supplies, services, and other costs and expenses of whatever nature for this Project. The City shall also maintain any documents, records, and other information required by or required to be maintained by the City pursuant to the TIGER Grant Agreement. The City shall make its records, documents, books, and other information the City is required to maintain, available to representatives of the Secretary for audit upon request by the Secretary for a period of five (5) years after date of final payment under this Agreement and issuance of the Notice of Acceptance.

(b) Plan Retention. The City will maintain a complete set of final Design Plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all the above-mentioned documents to the Secretary.

18. **Indemnification by City**. The City will indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives, employees, and agents from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions of this Agreement or performance of this Agreement by the Secretary and/or the Secretary's authorized representatives, employees, and agents. If the Secretary defends a third party's claim which arises out of or in connection with the provisions of this Agreement or performance of this Agreement by the Secretary and/or the Secretary's authorized representatives, employees, and agents, the City shall indemnify the Secretary and the Secretary's authorized representatives, employees, and agents for damages paid to the third party and all related expenses the Secretary and the Secretary's authorized representatives, employees, and agents incur in defending the claim.

19. **K.S.A. § 46.239(c) Certification.** The City shall certify that it is in compliance with K.S.A. § 46-239(c) by signing the Certification of Compliance attached as **Exhibit 1** and hereby incorporated in this Agreement.

20. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall require the Contractor to provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City and/or the Contractor to any party outside of the Secretary and all costs incurred by the City and/or the Contractor not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

21. **Cancellation of the Project.** If the Project is canceled for any reason and/or the Project fails to progress to issuance of a Notice of Acceptance, the City will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project and return any portion of the Secretary's \$3,000,000 grant contribution held by the City. The City agrees to pay to the Secretary such amounts within thirty (30) days after receipt by the City of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE IV

GENERAL PROVISIONS:

1. **Incorporation of Documents.** The final Design Plans for the Project, the TIGER Grant Agreement, the Contractor Agreement, and any other exhibits and special attachments are by this reference made a part of this Agreement.

2. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

3. **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

4. **Compliance with Federal and State Laws.** The Parties agree to comply with all state and federal laws and regulations applicable to the Project. The City represents and warrants that any Contractor and/or Consultant performing any services on the Project will also comply with all state and federal laws and regulations applicable to the Project.

5. **Cash Basis and Kansas Budget Laws.** Nothing in this Agreement is intended to violate the provisions of the Kansas Cash Basis Law (K.S.A. 10-1100 *et seq.*) and the Kansas Budget Law (K.S.A. 79-2935 *et seq.*) and at all times should be construed and interpreted so as to ensure that the City is at all times in compliance with such laws.

6. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

7. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

8. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

9. **Notices.** Any notice required or submitted under this Agreement shall be deemed given if personally delivered or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the Parties or such other addresses as either party shall from time to time designate by written notice.

The Secretary:

Rail and Freight Unit, John Maddox
Kansas Department of Transportation
Dwight D. Eisenhower State Office Building
700 SW Harrison Street
Topeka, Kansas 66603-3754

The City:

City Engineer
City of Garden City
301 N 8th Street
P.O. Box 998
Garden City, Kansas 67846

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF GARDEN CITY, KANSAS

CITY CLERK (Date)

MAYOR

(SEAL)

Michael S. King, Secretary of Transportation
Kansas Department of Transportation

By: _____
Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

KANSAS DEPARTMENT OF TRANSPORTATION

SPECIAL ATTACHMENT

CERTIFICATE OF COMPLIANCE WITH K.S.A. 46-239(c)

Kansas law (K.S.A. 46-239(c)) requires the Kansas Department of Transportation to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The following certification must be filled in by the signator of this contract:

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member.

Legislator name _____

Business phone _____

Address (Street, City, State, Zip Code)

Purpose of Employment: _____

Method of determining compensation: _____

or

_____ No, this contract is not being entered into with a legislator or a firm in which a legislator is a member.

The signer understands that this certification is factual and reliable and is part of this transaction.

By: _____

Date: _____

Contract/

Project

No: _____

(if applicable)

County: _____

(if applicable)

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following “Nondiscrimination Clauses”.

CLARIFICATION

Where the term “Consultant” appears in the following “Nondiscrimination Clauses”, the term “Consultant” is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant’s assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the “Regulations”). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant’s obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

CONSTRUCTION AND MAINTENANCE AGREEMENT

This Construction and Maintenance Agreement ("**Agreement**"), is executed to be effective as of the day _____ of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the City of Garden, Kansas (the "**City**").

WHEREAS, BNSF owns and operates a line of railroad in and between the Cities of Newton, Kansas and La Junta, Colorado;

WHEREAS, the City desires to assist through the provision of certain funds derived from State, local, and Federal sources in order to improve the existing BNSF rail line generally between Garden City and Syracuse, KS and between Caddoa and La Junta, CO and to facilitate the continued operation of Amtrak Train Numbers 3 and 4;

WHEREAS, the City will assist in providing funds, act as the public agency responsible for administering and disbursing the funds awarded by the Federal Railroad Administration (FRA) under the TIGER IV grant program pursuant to that certain *Grant/Cooperative Agreement* between FRA and the City dated as of _____ (the "**TIGER Grant Agreement**") and obtaining funds to administer from other parties contributing to the Project (defined below) as shown on Exhibit C; and,

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

The "**Project**" that is the subject of this Agreement is described in Exhibit A.

ARTICLE II – CONSTRUCTION

2.1. The expected labor, materials, tools, and equipment to complete the Project are shown on Exhibit B. In the event construction on the Project has not commenced within six (6) months following the Effective Date of this agreement, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit B. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit B not specifically mentioned therein may be included as a part of this Agreement upon written approval of the City, which approval will not be unreasonably withheld. Construction of the Project will include the following by BNSF:

- a. Labor, materials, equipment, and supplies procurement, necessary to complete the Project;
- b. Engineering, design, and contract preparation and contract services;
- c. Insurance during construction of the Project as required; and,
- d. Construction management and inspection services, as required in connection with the construction of the Project.

2.2. The work performed to complete the Project will be done on an actual cost basis either by third party contractors or with BNSF's own employees. Actual costs include applicable sales and use taxes (except to the extent City provides exemption letter(s) sufficient to avoid imposition of such taxes at time of purchase), business and occupation taxes and additives including, for example, the cost of vehicles, machinery, tools, supervision, clerical, union agreement lodging and rents and applicable payroll related

associated costs as will be applied by the use of the then current FRA approved additives for BNSF. The most current FHWA approved additives as of the date of this Agreement are shown in Exhibit D. Reimbursable costs for material (excluding appropriate overhead additives) will be valued as follows: New stock material will be valued at BNSF inventory price; second hand material will be valued at fifty (50) percent of new BNSF inventory price; shop manufactured material will be valued at BNSF inventory price; and non-stock material will be valued at invoice price. Working stock (including, but not limited to non-stock field material) not properly identifiable in one of the above categories will be valued at fair market value as determined by BNSF. Material will be included on invoice when received or otherwise assigned to the Project. In each case, "inventory price" above, shall mean that price carried on BNSF's books for all material of that character used for work on a Project and all other work of a similar nature performed by BNSF in that regional area.

2.3 BNSF may charge the City for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

2.4 All work performed under this Agreement will be performed in a good and workmanlike manner.

2.5 No Project costs incurred prior to written notice to proceed from the City to BNSF will be reimbursable under this Agreement. BNSF may perform work prior to notice to proceed from the City, the cost of which will count toward BNSF's contribution toward the cost of the Project.

- a. Reimbursement under this Agreement of costs incurred on the Project prior to issuance of the notice to proceed shall be limited to the funding available as set forth in Exhibit C.
- b. Costs incurred after the notice to proceed will be eligible for reimbursement, to the maximum limits indicated in this Agreement, if incurred after the notice to proceed is issued and before.

2.6 The failure of BNSF to perform, in whole or in part, any of the obligations of BNSF under this Agreement, by reason of the occurrence of fire, flood, explosion, disaster, strike, materials unavailability, delays in obtaining permits and approvals, unavailability of any funds shown on Exhibit C other than funds contributed by BNSF, unforeseen tasks including mitigation, that may be required by administrative or judicial decision, impacted soils or other environmental conditions are encountered during construction, the need to secure permits and approvals from any public agency claiming jurisdictional authority or responsibility over regulating or permitting Project work, judicial or administrative injunctions, unexpected physical conditions or any other cause beyond the reasonable control of BNSF (hereinafter referred to as "**Changed Condition**") shall be excused for all purposes, including time performance; provided, that BNSF shall promptly begin work when the Changed Condition abates and complete the work. If a Changed Condition has delayed work or increased costs so that either of the Project cannot be completed for the estimate cost or in the time or manner contemplated in this Agreement, BNSF need not proceed with completion of work until the Parties have amended the applicable Project scope and/or this Agreement in ways necessary to enable the applicable Project to be completed in the revised manner, for the revised amount and/or in compliance with the revised schedule. In the event of a claimed Changed Condition, BNSF shall promptly notify and consult with the City as to how to proceed pursuant to the provisions of this Agreement under the circumstances presented by the Changed Condition.

2.7 BNSF agrees to notify the City within 14 calendar days of any change in circumstances or commitments that it becomes aware of that adversely affect the plan to fund or to complete the Project as set forth in this agreement.

2.8 BNSF shall be responsible to design the Project or contract to have the Project designed in conformity with applicable federal design criteria, AREMA and BNSF standards.

ARTICLE III – FUNDING AND BILLING

3.1 The Notice to Proceed may be in the form of either U.S. Postal Service delivery or electronic mail (email) from the Office of Transportation Programs Director, Planning/Asset Management Engineer, or Planning/Asset Management Assistant Division Director, KDOT or City, which shall notice shall be

deemed confirmation that the funds described in Exhibit C from sources other than BNSF and Amtrak are available. No Notice to Proceed from the City or the FRA is needed prior to the initiation of any other project related to the La Junta Subdivision of BNSF.

3.2 The total actual cost of construction for the Project is presently estimated to be, as outlined on Exhibit B. Contributions of funds necessary to complete the Project are also outlined on Exhibit C.

3.3 City agrees to provide funds and will pay reimbursable costs for the Project less BNSF's and Amtrak's contribution as shown on Exhibit C.

3.4 BNSF shall submit to City, monthly in arrears, an invoice for actual costs incurred (as described in this Agreement) expended for the Project. City shall remit payment of invoices to BNSF within thirty (30) days of receipt, minus credit received for salvage and less the percentage of such actual costs equal to the percentage of BNSF's and Amtrak's contribution toward the total Project cost as set forth on Exhibit C. Any unquestioned allowable invoice amounts remaining unpaid after forty-five (45) days shall have become overdue and City shall be liable to pay interest pursuant to the Kansas Prompt Payment Act. Invoices shall be consistent with the terms and conditions of this Agreement. Invoices shall be supported by reasonable documentation, and cover only eligible expenditures within the Project scope, budget and Project limits as authorized under this Agreement. If the City disputes the amounts shown in the invoices or requires additional supporting information then City and BNSF shall promptly coordinate to attempt to resolve any issues and if such issues are not resolved within forty-five (45) days then BNSF may suspend work on the Project until such time as the dispute is resolved.

3.5 Following completion of the Project, BNSF shall calculate the actual final allowable cost of the work authorized and performed under the Project and will provide a final billing to City.

3.6 BNSF recognizes that the FRA shall not be subject to any obligations or liabilities to BNSF, third party or, third party subcontractors, or any other person not a party to this Agreement in connection with development and construction of the Projects.

3.7 BNSF affirms that it has sufficient funds available for that portion of the Project costs that are not to be paid by the City. BNSF also affirms that it has sufficient funds available to assure operation and maintenance of items funded under the Agreement that it will own or control.

ARTICLE IV – OTHER PROVISIONS

4.1 If the City uses any FHWA funds to reimburse Project costs under this Agreement then the City agrees to provide, to the BNSF Manager Evidence Preservation, such Project documentation and records as are agreed to between the parties including: any project applications; any letters of approval and/or authorization forms (e.g., PR-1240 or the equivalent); any and all payment Voucher forms requesting FHWA reimbursement (e.g., PR-20 or the equivalent) or any other such project authorization or funding records as BNSF may request from time to time. Such records will be provided by the City to BNSF on a mutually agreeable schedule or within two (2) months after such records are generated or received. Pursuant to this section and Article II, the City must "out of funds made available to it for the construction of the Project", reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement, up to the City Share.

4.2 The Project will consist of improvements to BNSF's rail network that will become a permanent part of BNSF's working capital. The City is not to receive and will not be entitled to any specific goods or services from BNSF or its affiliates in return for any payments by the City to BNSF in connection with this Agreement except for the express obligations of BNSF set forth herein. Title to all improvements made under the Project, including materials after installation, shall be vested in BNSF.

4.3 The terms and conditions from the TIGER Grant Agreement that are set forth in Exhibit E will apply to BNSF and to any subcontractor BNSF engages to do work on the Project. BNSF shall incorporate the terms of Exhibit E in the contract with any such subcontractor. Additionally, BNSF, specifically, agrees to provide the City with the information necessary to meet the following reporting requirements set forth in the TIGER Grant Agreement:

4.4 The City will not enter BNSF right-of-way, for any purpose related to this Project, without being accompanied by BNSF personnel and in compliance with BNSF safety requirements; such accommodations shall not be unreasonably withheld.

4.5 The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party. There are no third party beneficiaries of this Agreement.

4.6 Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

4.7 To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

4.8. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and the City with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

4.9 Except as noted previously for the notice to proceed, any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, or by overnight delivery, to the parties at the following addresses:

BNSF Railway Company:

BNSF Railway Company
Asst. Vice President – Engineering Services
2650 Lou Menk Drive
Fort Worth, TX 76131

The City:

City of Garden City
Steven F. Cottrell, P.E.
City Engineer
P.O. Box 998
Garden City, KS 67846

4.10 Provided the City and Amtrak have reimbursed BNSF for the cost of the Project less BNSF's contribution as shown on Exhibit C, BNSF agrees to maintain the Project improvements suitable for Class IV rail service for a period of 20 years after the completion of work.

4.11 Provided the City and Amtrak have reimbursed BNSF for the cost of the Project less BNSF's contribution as shown on Exhibit C, BNSF shall comply with the Performance Measures set forth on Exhibit F.

4.12 The following Exhibits are incorporated herein:

Exhibit A -	Project
Exhibit B -	Project Budget
Exhibit C -	Sources of Funds
Exhibit D -	FRA Additives
Exhibit E -	Flowdown Provisions
Exhibit F -	Performance Measurements
Exhibit G-	Final Engineering Report

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Printed Name:
Title:

The City of Garden City

By: _____
Printed Name:
Title:

Exhibit A

Final Design Summary

BNSF has identified the following locations as candidates for rail replacement to support the service outcomes agreement in accordance with BNSF’s conditioned based maintenance analysis. Mile post locations are subject to modification, depending on the actual cost of work compared to the amount of funding that is available. Under no circumstance, will project costs exceed the funding limits as described in Exhibit B, plus the net value of scrap material generated from the project.

BNSF will install continuous welded rail at the following locations:

Table 1 – 2015 Rail Scope

PRONO	PROJECT DESCRIPTION	BEGIN STATION	END STATION	LINE SEG	BEGIN	END	TRI	PROJ QUA	START DATE	END DATE
000231846	RAIL OOF ON WOOD	DEERFIELD	LAKIN	7300	419.94	421.24	S	12960	09/02/15	09/04/15
000207946	RAIL OOF ON WOOD	IOWA BEEF	DEERFIELD	7300	413.63	419.52	S	59360	09/08/15	09/24/15
000251004	RAIL OOF ON WOOD	HOLCOMB	IOWA BEEF	7300	409.30	412.25	S	29600	09/25/15	10/05/15
								101,920	Feet	

Total track miles: 9.652

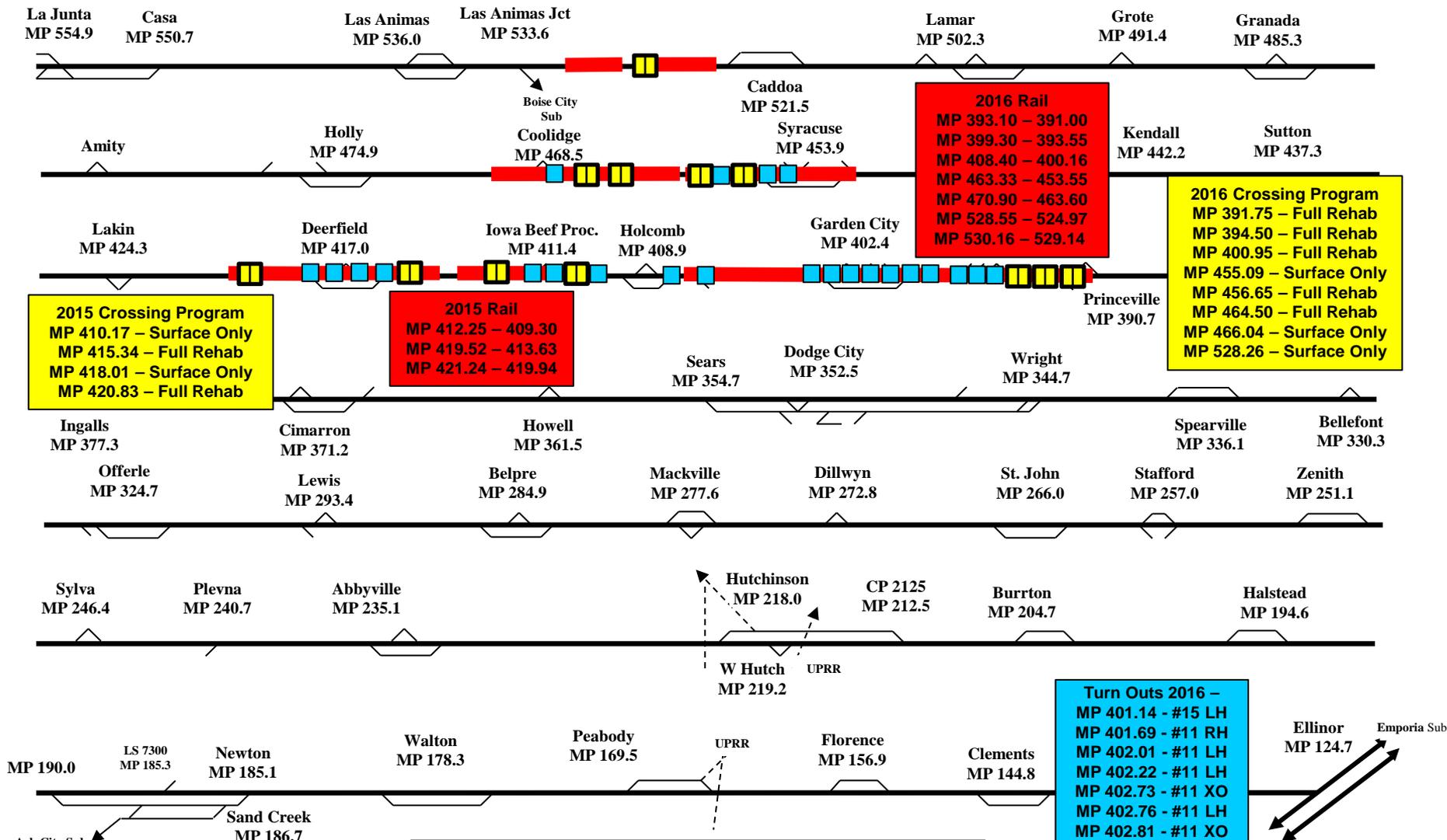
Table 2 – 2016 Rail Scope

PROJECT DESCRIPTION	BEGIN STATION	END STATION	LINE SEG	BEGIN	END	TRI	PROJ QUA	
RAIL OOF ON WOOD	PRINCEVILLE	GARDEN CITY	7300	391.00	393.10	S	22180	
RAIL OOF ON WOOD	PRINCEVILLE	GARDEN CITY	7300	393.55	399.30	S	60720	
RAIL OOF ON WOOD	GARDEN CITY	HOLCOMB	7300	400.16	408.40	S	82400	
RAIL OOF ON WOOD	SYRACRUSE	COOLIDGE	7300	453.55	463.33	S	102400	
RAIL OOF ON WOOD	SYRACRUSE	HOLLY	7300	463.60	470.90	S	80800	
RAIL OOF ON WOOD	CADDOA	LAS ANIMAS JCT	7300	524.97	528.55	S	37760	
RAIL OOF ON WOOD	CADDOA	LAS ANIMAS JCT	7300	529.14	530.16	S	7360	
							FEET	393620

Total track miles: 37.275

In addition, switches will be replaced and highway grade crossings will be replaced, as described in the project’s Final Engineering report attached to this Agreement as Exhibit G.

La Junta Sub Tiger Funding



Turn Outs 2015 –
 MP 409.30 - #15 RH
 MP 411.39 - #11 RH
 MP 411.66 - #11 LH
 MP 416.46 - #15 LH
 MP 416.80 - #11 RH
 MP 417.23 - #11 LH
 MP 417.32 - #15 RH

GANG	QTY	DAYS	DATES
RP			46.90 Total track miles 2015/2016
TP			
SC/SB			
UC			
Bridge			

Turn Outs 2016 –
 MP 401.14 - #15 LH
 MP 401.69 - #11 RH
 MP 402.01 - #11 LH
 MP 402.22 - #11 LH
 MP 402.73 - #11 XO
 MP 402.76 - #11 LH
 MP 402.81 - #11 XO
 MP 403.36 - #11
 MP 403.58 - #15
 MP 404.54 - #11
 MP 407.39 - #15
 MP 408.43 - #15
 MP 454.16 - #11
 MP 454.62 - #11 RH
 MP 455.37 - #15
 MP 468.53 - # 11 RH

2015 = 7 hours
 06/16/2015 PAS

EXHIBIT B

PROJECT BUDGET

Project Task	Federal Share	Non-Federal Share	Total Estimated Cost
Task 1.1: Preliminary and Final Engineering	\$ 0	\$ 0	\$ 0
Task 2.1: Rail Relay Material and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment, and Leasing of Vehicles)	\$ 9,434,219	\$ 7,117,043	\$ 16,551,262
Task 2.2: Switches/Turnouts and Materials and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment, and Leasing of Vehicles)	\$ 2,554,485	\$ 1,919,524	\$ 4,464,009
Task 2.3: Grade Crossings Improvements and Materials and Associated Costs (Contractor Expenses, Leasing of Machinery and Equipment and, Leasing of Vehicles)	\$ 491,259	\$ 263,433	\$ 754,692
Task 3: Project Administration	\$ 0	\$ 0	\$ 0
Project Total	\$ 12,469,963	\$ 9,300,000	\$ 21,769,963

EXHIBIT C

Sources of Funds

	<u>Amount</u>	<u>Percent of Total Project Cost</u>
BNSF Contribution:	\$ 2,000,000	9.19%
Amtrak Contribution:	\$ 4,000,000	18.37%
TIGER Grant:	\$12,469,963	57.28%
State of Kansas	\$ 3,000,000	13.78%
Local Communities	<u>\$ 300,000</u>	<u>1.38%</u>
Total Project Cost:	\$21,769,963	100.00%

EXHIBIT D

APPROVED ADDITIVES*

<u>Time Paid Not Worked</u>	
Examples are vacation, holidays and sick pay	15.0%
<u>Payroll Taxes</u>	
Company's portion of Railroad Retirement Tax	22.8%
<u>Health and Welfare</u>	
Company portion of medical plan costs, pension costs, and company's portion of 401(k) costs	28.1%
<u>Force Account Insurance</u>	
Percent is based on premiums paid to private insurers based on base labor incurred on government projects. Rate includes taxes and fees paid on premiums. (Used in place of Personal Injury additive.)	16.8%
<u>Department Overheads</u>	
Examples include mgmt labor, travel expenses, rents, utilities, supplies, small tools and safety shoes and glasses.	99.7%
<u>General and Administrative</u>	
Costs include Accounting, Information Services, Law, etc.	17.8%
Rate, exclusive of equipment	200.2%
<u>Equipment</u>	
Vehicles AND Roadway Machines	54.3%
Vehicles only	<u>28.0%</u>
TOTAL = When Roadway Machines AND Vehicles are used	254.5%
TOTAL = When only Vehicles are used	228.2%

*Subject to periodic updates

EXHIBIT E

FLOW DOWN REQUIREMENTS APPLICABLE TO BNSF AND ITS CONTRACTORS

As used herein, "Provider" means BNSF or its contractor, as applicable

1) DAVIS-BACON ACT

Provider shall comply with all applicable provisions of the Davis-Bacon Act (40 U.S.C. §3141, et seq.) as is specified in the Act. Under 40 U.S.C. 3146, because each Railroad has entered into collective bargaining agreements negotiated under the Railway Labor Act, wages under those agreements are deemed to comply with Davis-Bacon Act requirements and no further Davis-Bacon Act compliance is required for force account work performed by the Railroads on the Project. If the Railroads choose to use Provider and any subcontractors for any part of the Project consistent with the terms of the Flow down Agreement, the Provider shall comply and shall ensure any subcontractors comply with the requirements of the Davis-Bacon Act and all related acts and regulations, and all relevant contracts and subcontracts will include language required by 29 C.F.R. §5.5(a). Prevailing wage rates will be established for purposes of this Agreement pursuant to the rates to be provided by the Department of Labor.

2) BUY AMERICA

Except to the extent waived by the FRA, Provider shall comply with the Buy America provisions set forth in 49 U.S.C. §24405(a) for the Project with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth.

3) RECORD RETENTION/AUDIT

- a) Provider shall retain all books, documents, papers, accounting records, and other evidence relating to costs incurred under this Agreement and otherwise related to the performance of this Agreement and reimbursement payments hereunder, including but not limited to, the costs of administering this Agreement, for a period of 3 years after the later of the Project Completion Date and the date of the State's receipt of final reimbursement from the Government. The State will notify the Railroads in writing upon its receipt of final reimbursement from the Government. Provider shall make such materials available at their respective offices at all reasonable times and on reasonable prior notice during the Agreement period and for 3 years from the later of the Project Completion Date and the State's receipt of final reimbursement from the Government. The State, FRA, the City or any duly authorized representative of the State or the Federal Government shall have access to any books, papers, records, and documents of Provider that are directly applicable to this Agreement, the Project, the State Grant or the Federal Grant for the purpose of making audits, examinations, excerpts, and transactions; and copies thereof shall be furnished if requested.
- b) If any litigation or claim involving this Agreement has been filed before the expiration of the 3-year period described above or any audit permitted hereunder has commenced before the expiration of the 3-year period described above, the Provider shall maintain the records required (1) in the case of any litigation or claim, until completion of the action and resolution of all issues which arise from it, or until the end of such 3-year period, whichever is later, and (2) in the case of any audit, until completion of the audit or until the end of such 3-year period, whichever is later.
- c) Provider agrees to keep all Project accounts and records that fully disclose the amount and disposition by the Railroad of the Federal Grant funds and other funds received under this Agreement, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and such other financial records pertinent to the Project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984, as amended (31 U.S.C. §§7501-7507). Provider agrees to provide any information reasonably requested by the State in connection with its efforts to comply with the requirements of the Single Audit Act of 1984, P.L.

98-502 and OMB Circular A-133, and shall assist the State as necessary in its completion of the Schedule of Expenditures of Federal Awards and the Data Collection Form required by OMB Circular A-133.

- d) To the extent applicable, Provider agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A.

4) CIVIL RIGHTS COMPLIANCE

- a) Provider shall comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FRA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits discrimination on the basis of race, color, or national origin; (b) Title IX of the Educational Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) (as implemented by 49 C.F.R. 25), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) (as implemented by 49 C.F.R. 27, which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing; (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; (k) the requirements of any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (l) the requirements of any other nondiscrimination statute(s) or regulation(s) which may apply to the Railroad.
- b) Provider will promptly take any measures necessary to effectuate this Agreement. Provider further agrees that it shall take reasonable actions to guarantee that it and any subcontractors subject to the U.S. Department of Transportation regulations cited above, transferees, and successors in interest will comply with all requirements imposed pursuant to the statutes and Department of Transportation regulations cited above, other pertinent directives, and the above assurances.
- c) Provider shall provide all information and reports required by the Federal regulations and statutes referenced in this Section 4, or directives issued pursuant thereto (the "Regulations"), and shall permit access to its books, records, accounts, other sources of information and facilities as may be determined by the North Dakota Department of Transportation or the Federal Railroad Administration to be pertinent to ascertain compliance with such Regulations. Where any information required of Provider is in the exclusive compliance of another who fails or refuses to furnish this information, the Provider shall so certify to the North Dakota Department of Transportation or Federal Railroad Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5) DRUG-FREE WORKPLACE; DEBARMENT

- a) Pursuant to 2 C.F.R. Part 1200, Provider certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where Provider is unable to certify to the previous statement, the Provider shall send an explanation to the State.

- b) Provider agrees to obtain certifications on debarment and suspension from its subcontractors and otherwise comply with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200 and "Government-Wide Requirements for Drug-Free Workplace (Grants)," 49 C.F.R. Part 32 with respect to the Project.
- c) Provider shall impose the requirement to comply with 2 C.F.R. Part 1200 to each person with whom Provider enters into a covered transaction at the next lower tier, as required by 2. C.F.R. 180.330.

6) LOBBYING CERTIFICATION

By executing this Agreement, Provider agrees:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7) DISADVANTAGED BUSINESS ENTERPRISES

- a) Provider shall (a) comply with the requirements of 49 C.F.R. Part 26, as may be applicable; (b) provide maximum practicable opportunities for disadvantaged business enterprises and other small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses; and (c) implement best practices, consistent with federal laws regarding the participation of small, disadvantaged and minority owned businesses on contracts funded through this Agreement.
- b) Examples of best practices under 7(a) above would be to incorporate key elements of the DOT's DBE program (see 49 C.F.R. Part 26) by identifying opportunities for small business and disadvantaged business enterprises, soliciting through all reasonable and available means to small businesses and certified DBEs who have the capability to perform the work on the contract; where appropriate, breaking out contract work items into economically feasible units to facilitate participation; effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices to provide assistance in the recruitment and placement of small businesses and DBEs; and providing interested small businesses and DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation. Provider must document good faith efforts to achieve the

requirements of this Section. Good faith efforts are defined as efforts to achieve the requirements of this Section which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the requirement.

- c) *Contractor requirement.* Provider shall comply with the “Contractor’s DBE Plan” requirements set forth in the plan described in the next subsection, including the timely submission of the reports included therewith.
- d) BNSF has submitted a DBE plan for incorporating the above best practice into its implementation of the Project. The City shall submit the plan to FRA for its concurrence. If FRA requires modification of the plan, BNSF and the City shall work to jointly resolve the plan to FRA’s satisfaction.

8) COMPLIANCE WITH LAWS; AMERICANS WITH DISABILITIES ACT

- a) Notwithstanding any other provision of this Agreement, Provider shall comply with all applicable State and Federal laws, rules, and regulations with regard to the Project and its obligations under this Agreement, except to the extent preempted by federal law. Applicable Federal laws, rules and regulations under this Section 10 shall include without limitation applicable laws with which the Grant Agreement requires compliance; provided that notwithstanding anything herein or in the Grant Agreement, the inclusion or listing in the Grant Agreement of any laws, rules, and/or regulations that would not otherwise be applicable to the Project or Railroads in the absence of such inclusion or listing shall not make any such laws, rules, and/or regulations applicable to the Project or Railroads. Except as set forth in the Flow down Agreement, the Railroads are not agreeing by contract to comply with any provisions of the Grant Agreement or with any laws, rules, and/or regulations that would not otherwise apply. By executing this Agreement, Provider hereby certifies its compliance with the following laws, rules, and regulations; to the extent such certifications are required. Applicable Federal laws, rules, and regulations named in the Grant Agreement are as follows:
 - i. Davis-Bacon Act - 40 U.S.C. 3141, et seq.
 - ii. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
 - iii. Hatch Act - 5 U.S.C. 1501, et seq.
 - iv. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. 4601, et seq.
 - v. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470f
 - vi. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469a through 469c.
 - vii. Native American Graves Protection and Repatriation Act - 25 U.S.C. 3001, et seq.
 - viii. Clean Air Act, P.L. 90-148, as amended
 - ix. Section 404 of the Clean Water Act, as amended 33 U.S.C. 1251, et seq.
 - x. Section 7 of the Endangered Species Act, P.L. 93-205, as amended.
 - xi. Coastal Zone Management Act, P.L. 92-583, as amended.
 - xii. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a
 - xiii. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
 - xiv. American Indian Religious Freedom Act, P.L. 95-341, as amended
 - xv. Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101, et seq.
 - xvi. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. 4541, et seq.
 - xvii. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42U.S.C. 290dd through 290dd-2
 - xviii. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.
 - xix. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C.8373
 - xx. Contract Work Hours and Safety Standards Act - 40 U.S.C. 3701, et seq.
 - xxi. Copeland Anti-kickback Act, as amended - 18 U.S.C. 874 and 40 U.S.C. 3145
 - xxii. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.
 - xxiii. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.
 - xxiv. Federal Water Pollution Control Act, as amended - 33 U.S.C. 1251-1376
 - xxv. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.

- xxvi. Americans with Disabilities Act of 1990 - 42 U.S.C. 12101, et seq.
- xxvii. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. 1681 through 1683, and 1685 through 1687
- xxviii. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. 794
- xxix. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. 2000d *et seq.*
- xxx. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. 541, et seq.
- xxxi. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- xxxii. Freedom of Information Act - 5 U.S.C. 552, as amended
- xxxiii. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- xxxiv. Farmlands Protection Policy Act of 1981 – 7 U.S.C. 4201
- xxxv. Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.
- xxxvi. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661
- xxxvii. Section 9 of the Rivers and Harbors Act and General Bridge Act of 1946 - 33 U.S.C. 401
- xxxviii. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. 138
- xxxix. Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. 6901, et seq.
 - xl. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. 9601-9657
 - xli. Safe Drinking Water Act -- 42 U.S.C. 300F-300J-6
 - xl.ii. Wilderness Act -- 16 U.S.C. 1131-1136
 - xl.iii. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 -- 42 U.S.C. 6901, et seq.
 - xl.iv. Migratory Bird Treaty Act 16 U.S.C. 760c-760g
 - xl.v. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
 - xl.vi. Cargo Preference Act of 1954 – 46 U.S.C. 55305
 - xl.vii. Executive Order 11246 - Equal Employment Opportunity
 - xl.viii. Executive Order 11990 - Protection of Wetlands
 - xl.ix. Executive Order 11988 – Floodplain Management
 - I. Executive Order 12372 - Intergovernmental Review of Federal Programs
 - ii. Executive Order 12549 – Debarment and Suspension
 - lii. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - liii. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
 - liv. Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations – 2 C.F.R. Part 215
 - lv. Cost Principles for State and Local Governments – 2 C.F.R. Part 225
 - lvi. Non-procurement Suspension and Debarment – 2 C.F.R. Part 1200
 - lvii. Investigative and Enforcement Procedures - 14 C.F.R. Part 13
 - lviii. Procedures for predetermination of wage rates - 29 C.F.R. Part 1
 - lix. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States - 29 C.F.R. Part 3
 - lx. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) - 29 C.F.R. Part 5
 - lxi. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) - 41 C.F.R. Parts 60, et seq.
 - lxii. Contractor Qualifications - 48 C.F.R. Part 9
 - lxiii. Uniform administrative requirements for grants and cooperative agreements to state and local governments - 49 C.F.R. Part 18
 - lxiv. New Restrictions on Lobbying – 49 C.F.R. Part 20
 - lxv. Nondiscrimination in Federally Assisted Programs of the Department of Transportation –

- Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- lxvi. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs - 49 C.F.R. Part 24
- lxvii. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance - 49 C.F.R. Part 25
- lxviii. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance - 49 C.F.R. Part 27
- lxix. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- lxx. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors - 49 C.F.R. Part 30
- lxxi. Government wide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- lxxii. DOT's implementing ADA regulations, including the ADA Accessibility Guidelines in Part 37, Appendix A - 49 C.F.R. Parts 37 and 38
- lxxiii. Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 C.F.R. Part 40
- lxxiv. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 C.F.R. Part 381.
- lxxv. A-87 – Cost Principles Applicable to Grants and Contracts with State and Local Governments
- lxxvi. A-102 – Grants and Agreements with State and Local Governments
- lxxvii. A-133 - Audits of States, Local Governments, and Non-Profit Organizations
- lxxviii. Any other applicable OMB Circular based upon the specific TIGER Grant Recipient

- b) Provider shall comply with the applicable requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et. seq.).

9) **MISCELLANEOUS**

- a) Provider will comply with all of the commitments and conditions set forth in the NEPA documents, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to BNSF's responsibilities and have been agreed to by BNSF.
- b) If unanticipated cultural, archaeological, paleontological, or other protected resources are discovered during construction, all work in the immediate area of the discovery will stop until a qualified professional can evaluate the nature and significance of the discovery and a plan is approved for its removal or protection.
- c) If work stops for any reason, the parties will still be obligated to implement all applicable commitments and conditions included in the project environmental documentation, permits, agreements, and approvals that are in effect at the time that work stops, to the extent they apply to each party's responsibilities in this Agreement, in order to keep the project in environmental compliance until the affected work resumes.
- d) Provider will conduct the Services under this Agreement in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. Provider shall include in each subcontract exceeding \$50,000 entered into by Provider in connection with the project an affirmative covenant requiring such subcontractor to immediately inform Provider and BNSF upon the receipt of a communication from the Environmental Protection Agency ("EPA") regarding the EPA's List of Violating Facilities. Provider certifies that no facilities that will be used to perform Services under this Agreement are listed on the EPA's List of Violating Facilities. Provider will notify BNSF as soon as it or subcontractor engaged by it receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Provider's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

- e) No product or service of a foreign country may be used during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

EXHIBIT F

PERFORMANCE MEASUREMENT

Study Area:

The study area consists of BNSF Railway's La Junta Subdivision between mile posts 391.000 just east of Garden City, KS and 530.161 near Las Animas, CO.

Measure	Description of Measure	Measurement Period	Reporting Period
Measure 1: FRA Track Classification	FRA Track Classification establishes track quality rating and maximum allowable operating speed.	Pre-project (Baseline) Measurement: Certification of Track Classification year prior to initiating work under this Agreement. (After) Project Performance Measurement: Yearly for a period of 3 years after the project opens for operation under normal conditions.	Pre-Project (Baseline) Measurement: Reporting period is 1 year prior to initiating work under this Agreement. Report is due by December 31, 2015. (After) Project Performance Measurement: Annually for a period of 3 years, starting 1 year after project completion, submitted by March 1 annually.

Measure	Description of Measure	Measurement Period	Reporting Period
<p>Measure 2: Slow Order Minutes</p>	<p>Annual number of minutes under slow order restrictions due to rail condition (ie: Speed on a rail line below normal speed limit for line, or normal speed for service).</p>	<p>Pre-Project (Baseline) Measurement:</p> <p>Annual average for one year prior to initiation of construction (reported for project area only).</p> <p>(After) Project Performance Measurement:</p> <p>Annually for a period of 5years after the project opens for operation under normal conditions.</p>	<p>Pre-Project (Baseline) Measurement:</p> <p>Reporting period is 1 year prior to initiating work under this Agreement. This report is due by December 31, 2015.</p> <p>(After) Project Performance Measurement:</p> <p>Annually for a period of 5 years, starting 1 year after project completion, submitted by March 1 annually.</p>



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**EXHIBIT G - CORRIDOR RELIABILITY UPGRADE
SOUTHWEST CHIEF ROUTE IMPROVEMENT
PROJECT
2015 RTB
CITY OF GARDEN CITY, KANSAS**

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1 **Introduction:**

2 The following report is provided to the City of Garden City, KS; Kansas DOT;
3 AMTRAK by BNSF Railway Company (BNSF) as the Final Design for the
4 Southwest Chief Route Improvement Project.

5
6 BNSF will continue to execute its Capital Plan for the LaJunta Subdivision in
7 conjunction with work performed under Design for the Southwest Chief Route
8 Improvement Project. BNSF will continue to use its conditioned based
9 maintenance practices to determine and fund appropriate BNSF Capital
10 Expenditures on the LaJunta Subdivision to ensure a safe and reliable
11 infrastructure for freight and passenger services is maintained and ensure
12 compliance with the Service Outcomes Agreement.

13
14 **Document Compliance:**

15 BNSF has developed these Final Design documents for this Project. Final
16 Design was developed in accordance with the FRA-approved project-level
17 NEPA. This submittal includes this document, and all attached documents. This
18 submittal complies with the Submittal Guidelines for the Southwest Chief Route
19 Improvement Project as previously developed with the City of Garden City,
20 Kansas, and concurred with by the FRA (Federal Railroad Administration).

21
22 This FD (Final Design) submittal to gain acceptance for the Southwest Chief
23 Route Improvement Project is consistent with BNSF's detailed work plan as
24 previously submitted to the City of Garden City, Kansas. This submittal is
25 aligned with the Service Outcomes Agreement.

26

1 **Project Description**

2 The purpose of this grant is to provide a portion of the funding for the Southwest
3 Chief Route Improvement project. The Southwest Chief is a popular Amtrak
4 long-distance passenger service between Chicago and Los Angeles. A segment
5 of the route through Kansas and eastern Colorado is on a BNSF Railway
6 subdivision whose traffic levels do not justify the investment required to support
7 passenger train speeds. The condition of the route has been deteriorating and
8 will erode to the point where operation of the train on the route is not feasible.
9 The Southwest Chief provides a critical passenger transportation need for rural
10 communities in Kansas and Colorado. There is much support for the train. The
11 stakeholders in its continued operation, Kansas, Colorado, the local
12 communities, Amtrak, and the BNSF Railway have developed a plan for
13 addressing the infrastructure needs of the route and have committed funds to its
14 rehabilitation. The TIGER funds represent a key component of the funding
15 program and will preserve passenger service along this route.

16
17 Southwest Chief Route Improvement Project RTB includes the following element
18 for design and construction:

- 19 1. Rail replacement
20
21

22 **Attachment 1: Southwest Chief Route Improvement Project Rail Track**
23 **Charts**
24

Final Design Summary

BNSF, as part of this FD for Southwest Chief Route Improvement Project, has determined the following locations are candidates for rail replacement to support the service outcomes agreement in accordance with BNSF's conditioned based maintenance analysis.

BNSF will install ribbon rail at the following locations:

Table 1 – 2015 Rail Scope

PRONO	PROJECT DESCRIPTION	BEGIN STATION	END STATION	LINE SEG	BEGIN	END	TR	PROJ QUA	START DATE	END DATE
000231846	RAIL OOF ON WOOD	DEERFIELD	LAKIN	7300	419.94	421.24	S	12960	09/02/15	09/04/15
000207946	RAIL OOF ON WOOD	IOWA BEEF	DEERFIELD	7300	413.63	419.52	S	59360	09/08/15	09/24/15
000251004	RAIL OOF ON WOOD	HOLCOMB	IOWA BEEF	7300	409.30	412.25	S	29600	09/25/15	10/05/15
								101,920	Feet	

Total track miles: 9.652

Table 2 – 2016 Rail Scope

PROJECT DESCRIPTION	BEGIN STATION	END STATION	LINE SEG	BEGIN	END	TR	PROJ QUA
RAIL OOF ON WOOD	PRINCEVILLE	GARDEN CITY	7300	391.00	393.10	S	22180
RAIL OOF ON WOOD	PRINCEVILLE	GARDEN CITY	7300	393.55	399.30	S	60720
RAIL OOF ON WOOD	GARDEN CITY	HOLCOMB	7300	400.16	408.40	S	82400
RAIL OOF ON WOOD	SYRACRUSE	COOLIDGE	7300	453.55	463.33	S	102400
RAIL OOF ON WOOD	SYRACRUSE	HOLLY	7300	463.60	470.90	S	80800
RAIL OOF ON WOOD	CADDOA	LAS ANIMAS JCT	7300	524.97	528.55	S	37760
RAIL OOF ON WOOD	CADDOA	LAS ANIMAS JCT	7300	529.14	530.16	S	7360
						FEET	393620

Total track miles: 37.275

1 **Final Design Procedure**

2 The following describes BNSF Final Design Processes for the proposed work
3 activities for the Southwest Chief Route Improvement Project. These processes
4 are aligned with BNSF's internal Capital Planning processes for similar BNSF
5 funded activities. These processes are Proprietary and Confidential.

6
7 **Southwest Chief Route Improvement Project - Rail**

8 BNSF has completed its analysis of the current rail condition on the La Junta
9 Subdivision for 2015/6. The identified rail relay locations for the Southwest Chief
10 Route Improvement Project in 2015 were identified and selected by BNSF based
11 on its expectation that replacement of these rail assets would result in increased
12 network reliability. This increase in network reliability would directly reduce
13 negative impacts to passenger rail service.

14
15 **BNSF Conditioned Based Rail Relay Parameters**

16 BNSF's rail relay program is based upon ratings derived through analysis of
17 multiple factors impacting rail performance. These factors include:

- 18 A. Number of broken rails (service failed rail) in the preceding 12 months
- 19 B. Total defects per mile in the last 12 months
- 20 C. Total defects per mile in the last 24 months
- 21 D. Accumulated tonnage (yearly and accumulated)
- 22 E. Weight of rail
- 23 F. Rail wear limits (vertical head loss/gage face wear)
- 24 G. 3 year average defect rating
- 25 H. 5 year average defect rating

26
27 BNSF assembles this information from numerous sources including geometry
28 cars, rail detection vehicles, and physical inspection/repair by BNSF personnel.
29 BNSF develops its rail ratings to support its system-wide Capitol Planning
30 Processes.

31

1 **Southwest Chief Route Improvement Project Budget**

2 BNSF has identified the work items detailed in the preceding pages as required
3 to meet the applicable provisions of the Service Outcomes Agreement. Tables 2
4 and 3 below summarize the items detailed previously and includes a cost for
5 each item. As noted below, the current cost estimate for Southwest Chief Route
6 Improvement Project CN exceeds the approved Task 8 budget of \$86.6M by
7 approximately \$1M. This is due to several key elements:

- 8
- 9 1. Cost increases in materials that were not allocated in previous estimates.
10 These increases are above those anticipated in the escalation contained in
11 the original 2014 estimates to 2015 CN.
- 12

1 **Table 2 – Task 8 - CRUS Construction**

2

Description	Anticipated Qtys	Cost
Rail Relay	46.93 TM (9.652 in 2015)	\$17,664,903
Install Turnouts	23 ea	\$ 4,363,572
Road Crossing Rehabs	40 ea	\$ 751,633
SCRIP Construction Total:		\$22,780,108

3

4

1 **BNSF Standard Plan Reference**
2 BNSF shall conduct the work activities described in this FD submittal in
3 accordance with BNSF Engineering Instructions, Standard Plans, and other
4 governing BNSF policies and procedures. These documents are Proprietary and
5 Confidential. BNSF Standard Plans and Engineering Instructions applicable to
6 the work activities described in this submittal include, but are not limited to the
7 following:

8

9 <u>Drawing Number</u>	<u>Plan Title</u>
10 1000	Mainline and Siding Roadbed Section (Existing Track)
11 2602	Double Shoulder 14" Tie Plate
12 176000	136 LB. Rail Section
13 130005	6" Track Spike
14 135010	Bar Stock Anchor for 5 1/2" and 6" Base Rail

15

16 <u>BNSF Engineering Instructions</u>	
17 Chapter 1	Safety
18 Chapter 5	Track Geometry
19 Chapter 6	Rail
20 Chapter 7	Ties
21 Chapter 8	Ballast and Subgrade
22 Chapter 9	Turnouts, OTM, Railroad and Crossings
23 Chapter 10	Track Welding and Grinding
24 Chapter 24	Construction

25