

## **OLATHE WEST TRACK CORRIDOR STUDY FUNDING AGREEMENT**

BNSF File No. BF- 20603172

Line Segment 7100

Mile Post 24.3 – 26.9

Emporia Subdivision

DOT Nos. 006143T, 006144A, 006145G, 006147V, 006149J, 006150D, 006151K, 006152S, 006155M

THIS AGREEMENT ("Agreement") is entered into by and between BNSF RAILWAY COMPANY, hereinafter referred to as "BNSF", and the CITY OF OLATHE, a political subdivision of the State of Kansas, hereinafter referred to as "Agency", or collectively hereinafter referred to as "Parties".

Whereas, BNSF operates a freight transportation system by rail which runs through the City of Olathe, County of Johnson, State of Kansas; and

Whereas, the Agency has applied for and was awarded a grant through the Federal Railroad Administration ("FRA") known as the 2024 Railroad Crossing Elimination Program ("RCE Grant"); and

Whereas, BNSF is willing to provide Agency an incentive payment to assist with the funding of the required local match for the RCE Grant in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00), provided the agency fulfills the obligations of the RCE Grant award as outlined by the FRA in the RCE Grant scope ("Project"); and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BNSF and Agency hereby agree as follows:

1. BNSF agrees to and hereby shall pay to Agency an incentive payment in the total amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) to fund the performance of the promises provided herein by Agency ("Payment"). BNSF's Payment shall be due and payable to Agency within sixty (60) days of receipt from Agency this fully executed Agreement, a fully executed grant agreement between the City and the FRA, and an invoice containing the Agency's tax ID number.

Agency certifies that, prior to execution of this Agreement, Agency has taken all necessary actions to obtain and exercise legal authority to enter into this Agreement and bind itself to the promises and obligations contained herein.

2. Agency shall execute the Project at its sole expense in consideration of the Payment received from BNSF and RCE Grant. The construction and maintenance of any new improvements shall be governed by a separate agreement to be entered into between Agency and BNSF following completion of the preliminary design of the improvements ("C&M Agreement"). The design of the new improvements shall

be subject to BNSF's review and acceptance in accordance with the BNSF-UPRR Joint Guidelines for Railroad Grade Separation Projects and any other applicable engineering standards governed by a separate agreement to be entered into between Agency and BNSF ("Preliminary Engineering Agreement"). BNSF shall perform any railroad work, including design review, project management, and the provision of railroad flagging, at Agency's expense pursuant to the C&M Agreement and the Preliminary Engineering Agreement.

3. The rights granted in this Section shall be in addition to any other remedies available to the Parties, including the right to seek specific performance of each of the obligations contained in this Agreement.

Notwithstanding any other part of this Agreement, nothing herein shall constitute an approval of or obligate BNSF to accept the plans prepared by the Agency, enter into a subsequent agreement for the construction and/or maintenance of a structure over or under the Crossing, provide any temporary or permanent easement or other property right, or otherwise authorize the new structure except as may hereafter be approved by BNSF in its discretion.

4. The Agency shall indemnify and hold harmless BNSF for loss and/or damage to persons and/or property belonging to any person arising in any manner from the Agency's acts or omissions on any work performed by Agency on BNSF's property under this Agreement to the limits set forth under the Governmental Tort Claims Act.

The Agency shall provide, at its own cost and expense, all necessary barricades, lights, or traffic control devices for detouring vehicular and pedestrian traffic in the Project limits during construction of the new improvements.

-Signature Page To Follow-

This Agreement is executed on this \_\_\_\_\_ day of \_\_\_\_\_ 2025, and shall be binding upon and inure to the benefit of the successors or assigns of the Parties hereto.

The Parties represent that they have the authority to enter into this Agreement and that the signatories to this Agreement represent the respective Parties' approval in executing the Agreement.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF OLATHE**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_