TOWN OF TIMNATH, COLORADO
RESOLUTION NO.46, SERIES 2016

A RESOLUTION APPROVING THE CONSTRUCTION PHASE
OF THE SUMMERFIELDS CROSSING PROJECT

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, the Town has included this project in its 2016 Capital Improvement Projects; and

WHEREAS, the Town Council is familiar with the Project and finds it to be in the best interest of the Town, its residents, and the general public to proceed with construction;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval
The required agreements and expenditure of funds up to $1,124,323 is hereby approved for the construction of the Summerfields Crossing project. The required agreements may be finalized the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.


TOWN OF TIMNATH, COLORADO

[Signature]
Bryan Voronin, Mayor Pro Tem

ATTEST:

[Signature]
Milissa Peters, CMC
Town Clerk
GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

This GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this ______ day of May 2016 (the "Effective Date"), by and between the TOWN OF TIMNATH, COLORADO ("Town") and the GREAT WESTERN RAILWAY OF COLORADO, L.L.C., a Colorado limited liability company ("GWR").

RECITALS

WHEREAS, GWR owns and operates a line of railroad in and through the Town;

WHEREAS, in the interest of safety, the Town seeks to relocate the existing public at-grade crossing of Larimer County Road 36 ("LCR 36") and the GWR tracks, DOT#244884J, from GWR milepost 83.47 to railroad milepost 83.2 where Summerfields Parkway will be extended across the GWR tracks, close the existing LCR 36 at-grade crossing, construct a new at-grade crossing of Summerfields Parkway and the GWR tracks, and install flashing light signals, gates, bells, control cabin, and constant warning time circuitry ("Crossing Signal Equipment");

WHEREAS, GWR is willing to construct the improvements at the new Summerfields Parkway crossing and remove and close the LCR 36 crossing at the Town's expense;

WHEREAS, the Town has agreed to fund 100% of the GWR's cost to install the Crossing Signal Equipment at Summerfields Parkway up to $250,000 and has agreed to fund 100% of the cost to construct the crossing surfaces for Summerfields Parkway and the removal and closure of the County Road 36 Highway Crossing (collectively, the "Work");

WHEREAS, the Colorado Public Utilities Commission ("PUC") has approved the Town's application to construct the Summerfields Parkway at-grade crossing and close the LCR 36 crossing by Decision No. C10-0560 dated June 8, 2010;

WHEREAS, the Town and GWR desire to enter into this Agreement to provide for the terms and conditions governing construction and maintenance of the Summerfields Parkway crossing, removal of the LCR 36 crossing, and payment of such work;

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, the parties agree as follows:
AGREEMENT

ARTICLE I. Scope of Work.

1. The term "Project" as used herein includes any and all work related to the closing of the LCR 36 crossing, construction of the 48' wide Summerfields Parkway crossing with detached sidewalks and roadway center medians on both sides of the crossing, and installation of the active warning devices ("Crossing Signal Equipment") consisting of two flashing lights, gates, bells, one control cabin, and constant warning time circuitry shown on the Plans, Exhibit A, attached hereto and incorporated herein by reference. The completed crossing warning devices shall conform to Part VIII of the 2003 Edition of the National Manual of Uniform Traffic Control Devices (MUTCD). All required installation work at the crossing shall be performed by GWR with internal forces or contractors in accordance with 23 CFR, Part 646.216.

2. GWR will not begin to work without written authorization from the Town to proceed. GWR agrees to begin the Work within thirty (30) days after execution of this Agreement, receipt of written notice from the Town to proceed, or receipt of all equipment and materials necessary for the Work, whichever is later. Provided GWR receives payment from the Town as required by Article III, Section 1, of this Agreement, GWR agrees to complete the Work as soon as reasonably possible.

ARTICLE II. GWR Obligations.

1. By separate agreement in the form of Exhibit B and for the consideration of $1.00, GWR shall grant to the Town, its agents and contractors a non-exclusive perpetual Easement ninety-two (92) feet wide upon and across the one hundred (100) feet wide GWR right of way at approximately MP 83 ("Easement Area") as shown on Exhibit A for the use, repair, and maintenance of Summerfields Parkway.

2. GWR will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibits A and C attached hereto and made a part hereof ("GWR Work"). In the event construction on the Project has not commenced within six (6) months following the Effective Date, GWR may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit C. 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 C not specifically mentioned therein may be included as a part of this Agreement upon written approval of Town, which approval will not be unreasonably withheld. The principal elements of GWR Work are as follows:

(a) Procurement of materials, equipment and supplies necessary for GWR Work;

(b) Preliminary engineering, design, and contract preparation;
(c) Furnishing of flagging services during construction of the Project as required during performance of Town Work adjacent to and within twenty-five (25) feet of the centerline of the GWR track;

(d) Furnishing engineering and inspection as required in connection with the construction of the Project;

(e) Installation of a forty-eight (48) foot concrete crossing surface and sidewalks;

(f) Installation of Crossing Signal Equipment as shown on Exhibit A and listed in Exhibit C;

3. GWR will do all GWR Work set forth herein on an actual material and labor plus burden cost basis and not on a lump sum or guaranteed maximum price basis. GWR may charge Town for insurance expenses, including self-insurance expenses, if any, 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 GWR’s employees, if any.

4. GWR will provide flagging as required. Flagging costs are not included in Exhibit C. Unless determined otherwise by GWR’s System Engineer, a GWR flagger will be required and furnished when Town’s or Town’s Contractor’s Work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond twenty-five (25) feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence. Flagging generally consists of one employee. Each time a flagger is called, the minimum period for billing will be the eight hour basic day. The daily cost of a flagger is approximately $800-1200 per basic day, with time and a half over 40 hours per week, and double time on holidays based on collective bargaining agreements. The rate includes vacation allowance, paid holidays, unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio equipment, supervision and other costs incidental to performing flagging services.

5. During the construction of the Project, GWR will send Town progressive invoices detailing the costs of the GWR Work performed by GWR under this Agreement and any work of an emergency nature caused by Town or Town’s contractor in connection with the Project which GWR deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or GWR property. Such work may be performed by GWR without prior approval of Town, but GWR will send notice of such work promptly after performance of such emergency work. Upon completion of the Project, GWR will send Town a detailed invoice of final costs, segregated as to labor and materials in the recapitulation shown on Exhibit C. GWR will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by GWR, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent
sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Town under this section.

ARTICLE III. Town's Obligations

1. Town agrees to pay GWR's actual costs, including additives, for engineering, materials, labor (including third party charges for the installation of electrical service), and flagging associated with the removal of the LCR 36 crossing, construction of the Summerfields Parkway crossing, and installation of the active warning devices and associated equipment. GWR's estimates for such Work are attached as Exhibit C. Town agrees to reimburse GWR for GWR Work within thirty (30) days of the date of the invoice for such GWR Work. Town agrees to pay GWR's final invoice within forty five (45) days of the date of the final invoice. Town agrees to pay its contractor timely and not allow the placement of any lien against GWR's property, and if such lien is filed, Town agrees to remove such lien at its expense, to the extent limited and as permitted by Colorado law, within thirty (30) days of placement of such lien. Town further agrees to pay the consideration agreed upon for the easement to be conveyed by GWR for the Summerfields Parkway crossing prior to commencement of Work on the Project.

2. Town must obtain all required permits, approvals, and comply with all applicable federal, state, and local regulations for the construction of the Project and comply with.

3. Town must acquire all rights of way necessary for the construction of the Project.

4. Town must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than GWR which may be necessary for the construction of the Project.

5. Town must: construct the Project as shown on the attached Exhibit A and do all work provided for in the plans and specifications for the Project, except GWR Work that will be performed by GWR hereunder ("Town Work"). Town must furnish all labor, materials, tools and equipment for the performance of Town Work. The principal elements of Town Work are as follows:

(a) Design and construction of Summerfields Parkway;

(b) Installation of roadway pavement, stop bars and other pavement markings in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");

(c) Installation of advance warning signs in accordance with the MUTCD;

(d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on GWR's right-of-way;
(e) Provide suitable drainage, both temporary and permanent;

(f) Summerfields Parkway - provide all temporary and permanent barricades, lights, flagmen or traffic control devices necessary to prevent vehicular traffic from using the Summerfields Parkway crossing until all GWR Work is completed;

LCR 36- after Summerfields Parkway crossing is opened, Town shall provide temporary and permanent barricades to facilitate road closure of LCR 36;

(g) Construct asphalt/concrete roadway surface on approaches to the track. Roadway surface will match elevation of the GWR track crossing surface and remain level to a point at least thirty (30) feet from nearest rail. Ensure that any concrete roadway will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;

(h) Provide and place six (6) to twelve (12) inch wide section of asphalt between roadway concrete (and multi-use path) and the new concrete crossing surfaces to allow for the maintenance identified in (g) above;

(i) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of GWR;

(j) Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Town Work or Easement Area shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the GWR; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the GWR, the Town shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the GWR, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Easement Area by Town will affect any utility lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Town will be responsible at Town's sole risk to locate and make any adjustments necessary to such Other Improvements. Town must contact the owner(s) of the Other Improvements notifying them of any Work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Town must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Town must also use all reasonable methods when
working on or near GWR property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. Town agrees to keep the above-described Easement Area free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises excluding those specific ones identified in the TOWN landscaping plans which shall be at a height not to exceed thirty (30) inches as measured from the top of the rail, said work of cutting and removal to be done at such times and with such frequency as to comply with local laws and regulations and abate any and all hazard of fire.

6. The Town will approve the location of the signals and signal bungalow prior to the installation by GWR, which approval shall not be unreasonably withheld or delayed.

7. The Summerfields Parkway crossing shall not be open to traffic until the LCR 36 crossing is closed. The Town must have advanced railroad crossing signs and standard pavement markings in place at the Summerfields Parkway crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the opening of the Summerfields Parkway crossing to public traffic and acceptance of this Project by the Town and by GWR.

8. The Town must give GWR's System Engineer written notice to proceed ("Notice to Proceed") with the GWR Work after receipt of necessary funds for the Project. GWR will not begin the GWR Work (including, without limitation, procurement of supplies, equipment or materials) until such Notice to Proceed is received from Town.

9. The Town Work must be performed by Town or Town's contractor in a manner that will not endanger or interfere with the safe and timely operations of GWR and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by contractors on behalf of the Town within the Easement Area, Town shall require its contractors to provide proof of the insurance identified in Article III, Section 16 below and have such insurance policies approved by GWR.

11. Town must require its contractor(s) to notify GWR's System Engineer at least thirty (30) calendar days prior to requesting a GWR flagman. Additionally, Town must require its contractor(s) to notify GWR's System Engineer thirty (30) calendar days prior to commencing work on GWR property or within twenty-five (25) feet of the centerline of GWR tracks.

12. Except as otherwise provided below in this Section 12, all construction work performed hereunder by Town for the Project will be pursuant to a contract or contracts to be let by Town, and all such contracts must include the following:

(a) All work performed under such contract or contracts within the limits of Town's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by GWR;
(b) Changes or modifications during construction that affect the safety of GWR employees, trains or GWR’s on-time operations must be subject to GWR’s approval;

(c) No work will be commenced within the Easement Area until each of the contractors employed in connection with said Work have delivered to and secured GWR’s approval of a Contractor’s Right of Entry Agreement attached to this Agreement as Exhibit D; and

(d) Town and Town’s contractors or subcontractors shall have in place a safety and training program conforming to the requirements of federal, state, local laws and Federal Railroad Administration ("FRA"), rules and regulations, including, without limitation, 49 CFR Parts 214, 232 and 243 (collectively, the "Safety Rules and Regulations") and GWR’s Roadway Worker Protection Program. All employees of Town and Town’s contractors or any subcontractors utilized shall be required to attend GWR’s Roadway Worker Safety and Safety Rules Class prior to their performing any duties related to the Project. GWR, at its sole option, shall: 1) provide a train-the-trainer class at no additional cost to Town and Town’s contractors, or 2) arrange for a safety training provider suitable to GWR ("Trainer") to provide the class to Town and Town’s contractors or subcontractors and Town shall, at its sole cost and expense, pay directly to the Trainer a charge for each of Town’s employees or Town’s contractors or subcontractors employees attending such class. Periodic changes to the Safety Rules and Regulations or GWR’s Roadway Worker Protection Program may require additional or repeated training classes. The cost of Town’s employees, contractors or subcontractors attending the initial training class or be considered as incidental to the Work and GWR shall make no additional payments to Town for participation in these classes. The cost of Town and Town’s contractors or subcontractors personnel attending this class shall be considered as incidental to the Project, and GWR shall make no payments to Town for participation in this class. Town shall, to the extent limited and as permitted by Colorado law, release, defend and indemnify GWR from and against any and all claims, liabilities, damages, losses, costs or expenses, including, without limitation, attorneys' fees and legal costs arising or resulting from Town and Town’s contractors or subcontractors failing to comply with the Safety Rules and Regulations.

13. Town must advise the appropriate GWR’s System Engineer, in writing, of the completion date of the Project within thirty (30) days prior to such completion date. Additionally, Town must notify GWR’s System Engineer, in writing, of the date on which Town and/or its Contractor will meet with GWR for the purpose of making final inspection of the Project.

14. Each party assumes responsibility for its actions and omissions in the performance or failure to perform work under this Agreement, as well as the actions and omissions of its agents, contractors, and employees. The Town does not waive nor intends to waive the
limitations on liability which are provided to the Town, its officers, and employees under the Colorado Governmental Immunity Act, Section. 24-10-101 et. seg., C.R.S.

15. Where Town's property adjoins GWR's property, in the vicinity of the Summerfields Parkway crossing, Town shall keep its property free of bushes, trees, weeds, vegetation, and all other obstructions that could interfere with a motor vehicle operator sighting an approaching train. Landscape improvements, includes trees and bushes, as identified in the TOWN landscaping plans shall be allowed.

16. Town, if and to the extent that Town is performing work on or about GWR's property, shall purchase and maintain insurance as specified below covering the Summerfields Parkway Crossing during construction and maintenance of the crossing, all the work and services to be performed hereunder, and all obligations assumed hereunder, from the Effective Date of this Agreement until termination, unless duration is stated to be otherwise, through the Colorado Intergovernmental Insurance Agency ("CIRSA"), unless CIRSA does not provide such coverage:

(a) **Workers Compensation and Employers Liability Insurance** providing statutory workers compensation benefits mandated under applicable state law and employers' liability insurance subject to a minimum limit of $1,000,000 each accident for bodily injury by accident, $1,000,000 each employee for bodily injury by disease and $1,000,000 policy limit for bodily injury by disease.

(b) **Commercial General Liability Insurance** written on a claims-made basis subject to a limit $5,000,000 per occurrence and in the aggregate for bodily injury, property damage, personal injury and libel and/or slander with an annual aggregate limit of no less than $10,000,000. Policy is to include, but not be limited to, coverage for: Operations and Premises Liability, Completed Operations and Products Liability, Personal Injury Liability and Contractual Liability insurance. Any and all General Liability policies procured by Licensee shall be amended to delete any and all railroad exclusions including exclusions for working on or within fifty feet (50') of any railroad property, railroad track, railroad bridge, trestle or tunnel.

(c) **Business Automobile Liability Insurance** subject to a minimum limit of $1,000,000 each accident for bodily injury and property damage. Policy coverage shall be written on a claims-made basis to cover motor vehicles owned, leased, rented, hired or used on behalf of Licensee.

(d) **Railroad Protective Liability Insurance** Town must maintain Railroad Protective Liability ("RPL") insurance written on ISO occurrence form GC 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of GWC as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. The definition of "Job Location" and "Work" on the declaration page of the policy shall refer to this Agreement and shall describe all work performed under this Agreement. Town shall provide this Agreement to Town's insurance agent or broker and Town shall instruct such agent and/or
broker to procure the insurance coverage required by this Agreement. A binder of insurance stating the policy is in place must be submitted to GWR before work may commence and until the original policy is forwarded to GWR.

The named insured shall read:

Great Western Railway of Colorado, L.L.C.
252 Clayton Street, 4th Floor
Denver, Colorado 80206
Attn: Risk Management

(e) All insurance required of Town with the exception of Workers Compensation and Employers Liability shall include GWR and any subsidiary, management company, parent, owners and affiliates of Licensor, and their respective partners, successors, assigns, legal representatives, officers, directors, members, managers, shareholders, employees, agents, contractors and any third party railroad permitted by GWR to use GWR's facilities as additional insured and shall be primary and not excess over or contributory with any insurance carried by GWR and its affiliates. All insurance required of Town with the exception of Workers Compensation and Employers Liability shall be maintained for a period of two (2) years following the conclusion of any Town Work performed hereunder.

(f) Town shall endeavor to provide GWR thirty (30) days' written notice of insurer's intent to cancel or otherwise terminate policy coverage.

(g) Town shall file with GWR and its affiliates on or before commencement of the Work a valid Certificate of Insurance for all required insurance policies. Each certificate shall identify GWR, its affiliates and other required parties as set forth above as additional insured and state that the insurer will endeavor to provide GWR a minimum of thirty (30) days' advance written notice of insurer's intent to cancel or otherwise terminate policy coverage. Prior to expiration of such insurance, Town or Town's contractor shall supply updated Certificates of Insurance that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the original Certificates.

(h) Town hereby waives all rights of subrogation against GWR, its affiliates and other required parties as set forth above for damages to the extent covered by insurance. All insurance policies of Town or Town's contractor shall allow that any release from liability of or waiver of claim for recovery from any other party entered into in writing by Town prior to any loss or damage shall not affect the validity of said policy(ies) or the right of the insured or insureds to recover under them.

ARTICLE IV. Joint Obligations
1. After construction of the Summerfields Parkway at-grade crossing and installation of the active warning signal devices is completed, the Town and GWR acknowledge that their respective maintenance responsibilities shall be as follows:

(a) Pursuant to 4 CCR 723-7-7211(c), the Town acknowledges that it shall be obligated to maintain, repair, and replace, at no cost to GWR, the roadway approaches to the Summerfields Parkway crossing, which shall include all grading, road surfaces and drainage facilities, curb and gutter, sidewalks, and bike paths. Pursuant to 4 CCR 723-7-7211(a), the Town agrees to bear the cost of materials to maintain, repair, or replace the crossing surface.

(b) Pursuant to 4 CCR 723-7-7211(a), GWR acknowledges that it shall be obligated to maintain, repair, and replace the Summerfields Parkway crossing surface from the outside end of one tie to the outside end of the opposite tie of each by bearing the cost of labor for the installation, maintenance, repair, or replacement of the crossing surface to be provided by the Town. Pursuant to 4 CCR 723-7-7301 shall maintain the warning devices, flashing light signals, gates, crossbucks, and signage if any such appurtenances are installed by GWR, in good operating condition.

(c) Notwithstanding the preceding provisions, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Town or any other governmental or legislative authority increase the Town's portion of maintenance cost under this Agreement, GWR will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Town's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

(d) Nothing in this Agreement shall prevent either party from seeking state and/or federal grant monies to pay for the costs of their respective maintenance responsibilities.

2. In addition to the terms and conditions set forth elsewhere in this Agreement, GWR and the Town agree to the following terms upon completion of construction of the Project:

(a) Town will maintain the elevation of the Summerfields Parkway roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.

(b) Town will maintain the advanced railroad crossing warning signs and pavement markings and agrees, to the extent limited and as permitted by Colorado law, to hold harmless and indemnify GWR for any claims, damages or losses, in whole or in part, caused by or due to the Town's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
(c) Town will do nothing and permit nothing to be done in the maintenance of the Summerfields Parkway roadway, which will interfere with or endanger operation and facilities of GWR.

(d) It is expressly understood by Town and GWR that any right to install new utilities will be governed by a separate permit or license agreement between the parties hereto.

(e) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

(f) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

a) In the event the GWR's sole negligence destroys or damages the Crossing Signal Equipment, GWR must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Town must reimburse GWR for the costs to replace or repair such Crossing Signal Equipment.

(g) If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment will be negotiated by the parties hereto.

3. The Project will be constructed in accordance with Exhibit A and the PUC's Decision No. C10-0560.

4. GWR will have the right to stop Work on the Project if any of the following events take place: (i) Town (or any of its contractors) performs the Work in a manner contrary to the plans and specifications approved by GWR or breaches this Agreement; (ii) Town (or any of its contractors), in GWR's opinion, prosecutes the Work in a manner which is hazardous to GWR property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described above is canceled during the course of the Project; or (iv) Town fails to pay GWR for the easement pursuant to Article II, Section 1 of this Agreement. The Work stoppage will continue until all necessary actions are taken by Town or its contractor to rectify the situation to the satisfaction of GWR's System Engineer or until additional insurance has been delivered to and accepted by GWR. Any such Work stoppage under this provision will not give rise to any liability on the part of GWR. GWR's right to stop the Work is in addition to any other rights GWR may have including, but not limited to, actions or suits for damages. In the event that
GWR desires to stop Work on the Project, GWR agrees to immediately notify the following individual in writing:

[Town's representative]

5. Town must supervise and inspect the operations of all Town contractors to assure compliance with the plans and specifications approved by GWR, the terms of this Agreement and all safety requirements of the GWR railroad. If GWR determines that proper supervision and inspection is not being performed by Town personnel at any time during the Project, GWR has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Town corrects the situation to GWR's reasonable satisfaction. If GWR feels the situation is not being corrected in an expeditious manner, GWR will immediately notify _____________ for appropriate corrective action.

ARTICLE V. Liability and Indemnity

1. TOWN ASSUMES ALL RISK OF LOSS AND SHALL DEFEND, INDEMNIFY, AND HOLD GWR, OMNITRAX, THEIR OWNERS, PARENT, MANAGEMENT AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, SUCCESSORS, SHAREHOLDERS AND ASSIGNS ("INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES (TOGETHER WITH ALL LIABILITY FOR ANY EXPENSES, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED) FOR ALL INJURIES OR DEATH OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF EITHER PARTY AND DAMAGE TO THE PROPERTY OF ANY PARTY, TO THE EXTENT OCCASIONED BY ANY ACT OR OMISSION OF MM OR OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY TOWN OR ANY SUBCONTRACTOR AND RESULTING FROM OR ARISING OUT OF THE WORK PERFORMED OR TO BE PERFORMED PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR THE SOLE GROSS NEGLIGENCE OF THE PARTY SEEKING INDEMNIFICATION.

2. TOWN FURTHER AGREES TO ASSUME ALL RISK OF LOSS AND TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES (TOGETHER WITH ALL LIABILITY FOR ANY EXPENSES, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION
OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED) FOR ALL INJURIES OR DEATH OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF EITHER PARTY AND DAMAGE TO THE PROPERTY OF ANY PARTY, TO THE EXTENT OCCASIONED BY SEEPAGE CAUSED BY TOWN, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY OR FOR TOWN OR ANY SUBCONTRACTOR WHICH CAUSE OR CREATE POLLUTION, CONTAMINATION OR ADVERSE EFFECTS ON THE ENVIRONMENT, DUE TO, BUT NOT LIMITED TO, THE DISPOSAL OF ANY MATERIAL OR SUBSTANCE, INCLUDING, BUT NOT LIMITED TO, BATTERIES, DISCHARGE, ESCAPE DISPERSAL, RELEASE OR SATURATION OR SMOKE, VAPORS, SOOT, FUMES, ACIDS, ALKALIS, TOXIC CHEMICALS, LIQUIDS, GASES, OR HAZARDOUS SUBSTANCES INTO THE ATMOSPHERE OR ON, INTO THE SURFACE OR SUBSURFACE SOIL. TOWN SHALL NOT BE LIABLE TO THE EXTENT THAT ANY SUCH LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE IS PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE GROSS NEGLIGENCE OF THE PARTY SEEKING INDEMNIFICATION.

3. TOWN SHALL INDEMNIFY, HOLD HARMLESS, AND ASSUME THE COST OF DEFENSE OF THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS BY TOWN OR ANY OF ITS SUBCONTRACTORS.

4. THE INDEMNIFICATION PROVIDED FOR IN THIS ARTICLE V SHALL BE ENFORCEABLE TO THE EXTENT LIMITED AND AS PERMITTED BY COLORADO LAW.

ARTICLE VI. Miscellaneous

1. Appropriation. The parties agree and acknowledge that this Agreement does not constitute a multiple fiscal year debt or financial obligation of Town based on the Town's ability to terminate this Agreement pursuant to Article VI, Section 2. If the Town ceases to provide funds for its obligations contained in Article III, Section 1 or terminates the Agreement pursuant to Article VI, Section 2, then this Agreement shall be null and void.

2. Effective Date and Termination. This Agreement shall take effect as of the Effective Date and shall remain in effect until the completion of the Work. Notwithstanding the foregoing, this Agreement may be terminated by either party upon ten (10) days written notice so long as such notice is received by the other party prior to GWR ordering any materials necessary for or commencing performance of the Work. If GWR has ordered any of the materials and cannot return them and the Town thereafter terminates this Agreement prior to the time GWR commences performance of the Work, then GWR shall be entitled to keep that portion of the funds advanced by the Town that GWR has expended on the materials, labor or other costs directly attributable to the Work. Within thirty (30) days after completion of the Work, GWR shall furnish the Town with a written certification stating that the Work has been completed and
verifying that it expended the funds provided by the Town solely on the Work. Notwithstanding termination of this Agreement by completion of the Project, the following provisions will survive termination: Article III, section 16, Article IV.

3. **Independent Contractor.** In performing the GWR Work, GWR acts as an independent contractor and is not acting as an agent, servant or employee of the Town. GWR is solely responsible for withholding and paying all applicable federal and state taxes associated with the Work. GWR and its employees are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by GWR or an entity other than the Town.

4. **Applicable Law/Attorney's Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. In the event of litigation relating to or arising out of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

5. **Assignment/Binding Effect.** This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the successors in interest, assigns or the legal representatives of the parties.

6. **Notices.** Any notice or communication required under this Agreement between the Town and GWR must be in writing and may be given either personally, by registered or certified mail, return receipt requested, by Federal Express or other reliable courier service that guarantees next day delivery or by facsimile transmission (followed by an identical hard copy via registered or certified mail). If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed and the party has acknowledged receipt in writing. If given by any other method, a notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (b) as applicable: (1) three (3) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail; (2) the following business day after being sent via Federal Express or other reliable courier service that guarantees next day delivery; or (3) the following business day after being sent by facsimile transmission (provided that such facsimile transmission is promptly followed by an identical hard copy sent via registered or certified mail, return receipt requested). Any party may at any time, by giving written notice to the other party as provided in this Section 10, designate additional persons to whom notices or communications shall be given and designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the Town:

Town of Timnath, Colorado  
ATTN:  
4800 Goodman Street  
Timnath, CO 80547  
Fax: (970) 224-3217
If to the GWR: Great Western Railway of Colorado, L.L.C.
ATTN: General Counsel
252 Clayton Street
Denver, CO 80206
Fax: (303) 398-4540

With copies to: Great Western Railway of Colorado, L.L.C.
ATTN: General Manager
950 Taylor Avenue
Loveland, CO 80537
Fax: (970) 667-1710

7. **Remedies.** In the event of a breach or default by either party, as determined by a court of competent jurisdiction, the non-breaching party shall be entitled to any and all remedies available at law or equity, including, without limitation, actions for damages and injunctive relief.

8. **Waiver.** No waiver of one or more of the terms of this Agreement shall constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance shall constitute a waiver of such provision in other instances.

9. **Binding Effect.** This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

10. **Severability.** In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

11. **Counterparts.** This Agreement may be signed in counterparts, any one of which will be deemed to be an original. The parties further agree that any facsimile copy of a party's signature is valid and binding to the same extent as an original signature.
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the day and year first written above.

TOWN: TOWN OF TIMNATH, COLORADO

By: __________________________

ATTEST:

______________________________

GWR: GREAT WESTERN RAILWAY OF COLORADO, L.L.C., a Colorado limited liability company

By: __________________________

Hubert Gassner, Manager

STATE OF COLORADO )
) ss.
CITY AND COUNTY OF DENVER )

The foregoing GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT was acknowledged before me this ___ day of May, 2016, by Hubert Gassner, Manager of the Great Western Railway of Colorado, L.L.C., a Colorado limited liability company.

WITNESS my hand and official seal.

______________________________
Notary Public

My commission expires: _______________
EXHIBIT B

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT FOR ________________ ("Easement Agreement") is made and entered into as of the ______ day of ____________ 20__ ("Effective Date"), by and between Great Western Railway of Colorado, L.L.C. ("Grantor"), and Town of Timnath, Colorado ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Timnath, County of Larimer, State of Colorado, at Mile Post 83.2, Greeley Subdivision, as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of __________________________ concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1  Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be for the use, repair, and maintenance of Summerfields Parkway. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("Easement") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:
(a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;

(b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

(c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2  **Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3  **No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. **GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES.** Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4  **Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5  **Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the
Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee’s failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor’s legal fees and expenses.

Section 6  Environmental.

6.1  Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "Environmental Laws"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

6.2  Notice of Release. Grantee shall give Grantor immediate notice to Grantor’s Customer Service Center at (800) 533-9416 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee’s use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

6.3  Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement; Grantor may require Grantee, at Grantee’s sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

6.4  Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee’s reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

6.5  Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this Section 6. Should Grantee not comply fully with the above-stated obligations of this Section 6, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in Section 8.
Section 7  Default and Termination.

7.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

7.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

7.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by Section 8.

7.4 Non-exclusive Remedies. The remedies set forth in this Section 7 shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 8  Surrender of Premises.

8.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

(a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;

(b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and

(d) leave the Premises in the condition which existed as of the Effective Date.

8.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include
all of Grantee’s obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee’s Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 9 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to Section 5. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this Section 9 or any other section of this Easement Agreement.

Section 10 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: GWR, 252 Clayton Street, 4th Floor, Denver, CO 80206, Attn: General Counsel, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 11 Miscellaneous.

11.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Colorado without regard to conflicts of law provisions.

11.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

11.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys’ fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

11.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

11.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee’s use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee’s use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of
Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

11.6 Time is of the essence for the performance of this Easement Agreement.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

Great Western Railway of Colorado, L.L.C.

By: ____________________________
Name: __________________________
Title: __________________________

STATE OF COLORADO

COUNTY OF __________

§
§ SS
§

This instrument was acknowledged before me on the _____ day of March, 2016, by
__________ (name) as ____________________________________________ (title)
of Great Western Railway of Colorado, L.L.C.

Notary Public

My appointment expires: __________________

(Seal)

ACCEPTED:

GRANTEE:

Town of Timnath

By: ____________________________
Name: __________________________
Title: __________________________

ATTEST:

_______________________________

6
## Great Western Railway of Colorado

### Summerfields Road & CR 36

<table>
<thead>
<tr>
<th>Team</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
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</thead>
<tbody>
<tr>
<td>Q4</td>
<td>(98,549)</td>
<td>(98,549)</td>
<td>(7,153)</td>
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### Total Unleveraged Cash Flow: (200,250)

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<tr>
<th>Position</th>
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<th>ST Hours</th>
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<td>75</td>
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<td>$75.00</td>
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<td>7,481</td>
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### Total Internal Labor

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<th>Material</th>
<th>Unit</th>
<th>Curr</th>
<th>Rate</th>
<th>Qty</th>
<th>Total Cost</th>
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</thead>
<tbody>
<tr>
<td>Sommefields Parkway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1254 Rail, New</td>
<td>linear feet</td>
<td>USD</td>
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<td>3,300</td>
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<tr>
<td>1154 Rail, 11 Relay</td>
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<td>USD</td>
<td>22.00</td>
<td>150</td>
<td>3,300</td>
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<td>1354 Tie Plates DS</td>
<td>each</td>
<td>USD</td>
<td>12.00</td>
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<tr>
<td>1154 Tie plates</td>
<td>each</td>
<td>USD</td>
<td>12.00</td>
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<td>Bolts, nuts &amp; washers</td>
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<td>Ties, 7&quot; x 9&quot; x 8&quot;</td>
<td>each</td>
<td>USD</td>
<td>67.00</td>
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<td>Spikes, 5/8&quot; x 8&quot;</td>
<td>each</td>
<td>USD</td>
<td>70.00</td>
<td>30</td>
<td>2,100</td>
</tr>
<tr>
<td>Bolts, nuts &amp; washers</td>
<td>each</td>
<td>USD</td>
<td>3.75</td>
<td>50</td>
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</tr>
<tr>
<td>Track Ballast</td>
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<td>200</td>
<td>4,400</td>
</tr>
</tbody>
</table>

### Total Material

<table>
<thead>
<tr>
<th>Contract Services</th>
<th>Vendor</th>
<th>Curr</th>
<th>Rate</th>
<th>Qty</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sommerfields Parkway</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contract labor</td>
<td>USD</td>
<td>6,500.00</td>
<td>5</td>
<td>42,500</td>
<td></td>
</tr>
<tr>
<td>Surface, Line &amp; Dress</td>
<td>USD</td>
<td>1.75</td>
<td>2,000</td>
<td>3,500</td>
<td></td>
</tr>
<tr>
<td>CR 36 Retirement</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remove &amp; Ratchet FCW</td>
<td>USD</td>
<td>30,000.00</td>
<td>1</td>
<td>30,000</td>
<td></td>
</tr>
<tr>
<td>Contract labor</td>
<td>USD</td>
<td>6,500.00</td>
<td>3</td>
<td>25,500</td>
<td></td>
</tr>
<tr>
<td>Surface, Line &amp; Dress</td>
<td>USD</td>
<td>1.75</td>
<td>1,000</td>
<td>1,750</td>
<td></td>
</tr>
</tbody>
</table>

### Total Contract Services

<table>
<thead>
<tr>
<th>Other Capital</th>
<th>Vendor</th>
<th>Curr</th>
<th>Rate</th>
<th>Qty</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager Vehicle</td>
<td>USD</td>
<td>25.00</td>
<td>75</td>
<td>1,875</td>
<td></td>
</tr>
</tbody>
</table>

### Total Other Capital

<table>
<thead>
<tr>
<th>Taxes</th>
<th>Curr</th>
<th>Rate</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Tax</td>
<td>USD</td>
<td>1.070</td>
<td>5,073</td>
</tr>
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</table>

### Total Taxes

<table>
<thead>
<tr>
<th>Total Summerfields Road &amp; CR 36 Cost</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>(200,250)</td>
<td>(98,549)</td>
</tr>
</tbody>
</table>
**OMNITRAX INITIAL HGCWS ESTIMATE FORM**

**LOCATION:**
- **Street:** Summerfields Pa
- **DOT #:** 83.28
- **City:** Timnath
- **State:** Colorado
- **Railroad:** GWRC
- **Subdivision:** Greeley

**NOTE SPECIAL CONSIDERATIONS FOR PROJECT:**
Estimated per appendix A Barrier schematics

<table>
<thead>
<tr>
<th>Description</th>
<th>Required</th>
<th>Estimated Cost</th>
<th>Total Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>6x6 Aluminum House Pre-wired Single Track CWT Deter</td>
<td>1</td>
<td>$70,000</td>
<td>$70,000</td>
</tr>
<tr>
<td>Add 2 Track CWT</td>
<td>0</td>
<td>$15,000</td>
<td>$0</td>
</tr>
<tr>
<td>Additional Single Track CWT</td>
<td>0</td>
<td>$23,000</td>
<td>$0</td>
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<tr>
<td>Install Advance Preemption Circuitry</td>
<td>0</td>
<td>$10,000</td>
<td>$0</td>
</tr>
<tr>
<td>Install New Power</td>
<td>1</td>
<td>$10,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Island Circuit Only</td>
<td>0</td>
<td>$12,000</td>
<td>$0</td>
</tr>
<tr>
<td>Engineering Typical</td>
<td>1</td>
<td>$5,000</td>
<td>$5,000</td>
</tr>
<tr>
<td>Engineering project management</td>
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<td>$15,000</td>
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</tr>
<tr>
<td><strong>Main Crossing House Subtotal</strong></td>
<td></td>
<td></td>
<td>$80,000</td>
</tr>
<tr>
<td>Field Material:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FLG Assembly 16'-32' w/Foundation</td>
<td>2</td>
<td>$10,000</td>
<td>$20,000</td>
</tr>
<tr>
<td>2W Flasher Only w/Fnd Complete</td>
<td>0</td>
<td>$8,000</td>
<td>$0</td>
</tr>
<tr>
<td>Aux Lights 1W</td>
<td>0</td>
<td>$1,200</td>
<td>$0</td>
</tr>
<tr>
<td>Walkout Cantilever w/Fnd Complete per foot</td>
<td>0</td>
<td>$1,100</td>
<td>$0</td>
</tr>
<tr>
<td>Gate/Light Cable per foot Installed</td>
<td>350</td>
<td>$30</td>
<td>$10,500</td>
</tr>
<tr>
<td>Trackwire w/Boogles Installed per foot</td>
<td>400</td>
<td>$15</td>
<td>$6,000</td>
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<tr>
<td>Boring per foot</td>
<td>0</td>
<td>$50</td>
<td>$0</td>
</tr>
<tr>
<td>Fill Material and Cover Rock Typ</td>
<td>1</td>
<td>$3,000</td>
<td>$3,000</td>
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<tr>
<td>DAX Cable per foot Installed</td>
<td>0</td>
<td>$20</td>
<td>$0</td>
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<tr>
<td><strong>Field Material Subtotal</strong></td>
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<td></td>
<td>$39,500</td>
</tr>
<tr>
<td>Labor:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Man Crew Per Day 4 Day Min</td>
<td>8</td>
<td>$3,500</td>
<td>$28,000</td>
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<tr>
<td>Pick-up w/Trailer</td>
<td>8</td>
<td>$150</td>
<td>$1,200</td>
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<tr>
<td>Backhoe per Week</td>
<td>1</td>
<td>$1,200</td>
<td>$1,200</td>
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<tr>
<td>Forklift per Week</td>
<td>1</td>
<td>$1,200</td>
<td>$1,200</td>
</tr>
<tr>
<td>Round Trip Mobilization</td>
<td>1</td>
<td>$4,000</td>
<td>$4,000</td>
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<tr>
<td><strong>Labor Subtotal</strong></td>
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<td></td>
<td>$35,600</td>
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<tr>
<td>Miscellaneous:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retaining Wall</td>
<td>0</td>
<td>$5,000</td>
<td>$0</td>
</tr>
<tr>
<td>Upgrade Adjacent Crossing to CWT</td>
<td>0</td>
<td>$50,000</td>
<td>$0</td>
</tr>
<tr>
<td>Replace HWS With NBS</td>
<td>0</td>
<td>$1,000</td>
<td>$0</td>
</tr>
<tr>
<td>Install Insulated Joints</td>
<td>0</td>
<td>$11,000</td>
<td>$0</td>
</tr>
<tr>
<td>Freight</td>
<td>1</td>
<td>$5,500</td>
<td>$5,500</td>
</tr>
<tr>
<td><strong>Miscellaneous Subtotal</strong></td>
<td></td>
<td></td>
<td>$5,500</td>
</tr>
<tr>
<td><strong>TOTAL ESTIMATED COST</strong></td>
<td></td>
<td></td>
<td>$160,600</td>
</tr>
</tbody>
</table>
EXHIBIT D

Contractor's Right of Entry Agreement

This Agreement ("Agreement") is entered into this ______ day of April 2016, by and between
OF COLORADO, L.L.C. ("Contractor") and GREAT WESTERN RAILWAY
and GREAT WESTERN RAILWAY ("Railroad").

RECITALS

Contractor has been hired by the Town of Timnath (the "Town") to perform all or a portion of the Town Work as defined in Article III, Section 5, of the Grade Crossing Construction and Maintenance Agreement ("Crossing Agreement") dated _______ between Railroad and the Town, and as further described in Exhibit A and Exhibit C to the Crossing Agreement.

Railroad is willing to permit Contractor to perform the work described above (hereinafter, "Work") at the location described above subject to the terms and conditions contained in this Agreement.

AGREEMENT

Now, therefore, it is mutually agreed by and between Railroad and Contractor, as follows:

Section 1. General Conditions

A. For purposes of this Agreement, all references to Contractor shall include Contractor's contractors, subcontractors, officer, agents and employees, and others acting under its or their authority.

B. Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the Work. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described in the Crossing Agreement, and/or as designated by the Railroad representative named in Section 2. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all of any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages. Upon award Contractor shall inspect the work site in detail for any conflicts in utilities. Notification with pertinent details shall be made by Contractor to Railroad within fifteen (15) days of award. In good faith, Railroad will notify utility owners in the Work area to schedule relocation. Railroad is not responsible for any related cost or schedule delays.
C. Contractor shall bear any and all costs and expenses associated with any Work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement. All existing signal equipment which is removed by Contractor shall be salvaged and neatly stockpiled by Contractor at a location which is designated by the Railroad. Contractor shall take reasonable care not to damage salvaged equipment when it is being removed or transported. If salvaged equipment is damaged by Contractor, Contractor shall be responsible to Railroad for any loss, damage or destruction to such salvaged equipment.

D. Contractor shall complete the Work in accordance with A.R.E.M.A. recommendations, Federal Railroad Administration ("FRA") requirements, and the order from the Colorado Public Utilities Commission, and in the most thorough workmanlike and substantial manner in every respect, within the terms and time frames specified in this Agreement, according to the plans and specifications contained in Exhibit A to this Agreement and to the written satisfaction and acceptance of Railroad.

E. Contractor, at its own expense, shall adequately police and supervise all Work to be performed by Contractor and shall ensure that such Work is performed in a safe manner as set forth in Section 7 herein. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's Work shall not be lessened or otherwise affected by Railroad's acceptance of plans and specifications involving the Work, or by Railroad's collaboration in performance of any Work, or by the presence at the work site of a Railroad Representative or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

F. No changes shall be performed by Contractor to the plans and specifications contained in Exhibit A to this Agreement unless such changes have been approved in writing by Railroad Representative.

G. In the performance of the Work, Contractor and all of its subcontractors shall comply with all applicable federal, state and local government statutes, ordinances, orders, and regulations, including environmental laws, regulations, and ordinances.

H. Contractor shall not treat, store, or dispose of hazardous waste nor release any hazardous substances as the same are defined in applicable federal, state or local laws and regulations on or adjacent to Railroad's property.

I. No penalties, cost or additional expense resulting from Contractor's failure to comply with any of the requirements in Sections 1G and H shall be payable by Railroad.

J. Railroad may make periodic inspections of the Work to verify quality of materials, quality of workmanship, adherence to schedules, and to approve the Work. All Work is subject to final inspection and acceptance of the authorized representatives of the Railroad.

K. In the event the Railroad Representative detects any defect(s) in the Work during any periodic inspection or final inspection, Railroad Representative shall notify Contractor with explanation of the defect. Contractor will be given a maximum of thirty (30) days to correct any
such defects from the time it is notified by Railroad Representative of such defects. All defects will be repaired to the Railroad Representative's satisfaction.

L. Contractor represents that it has, or will secure, at its sole cost and expense, all personnel required to perform the Work under this Agreement. Such personnel shall not be employees of Railroad or OmniTRAX, Inc. ("OmniTRAX"). Contractor, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be, officers or employees of Railroad or OmniTRAX by reason of this Agreement. Contractor agrees that it is as fully responsible to Railroad and OmniTRAX for the acts and omissions of its employees, subcontractors, and of persons either directly or indirectly employed by a subcontractor, as the Contractor is for the acts and omissions of persons directly employed by the Contractor. Nothing contained in the Agreement documents shall create any contractual relationship between any subcontractor and Railroad or OmniTRAX.

M. Housekeeping and Site Maintenance

i. Throughout all phases of operations, including suspension of Work, and until final acceptance of the project, Contractor shall keep the work site clean and free from rubbish and debris.

ii. Upon completion of the Work and before acceptance of the Work by the Railroad, Contractor shall at once remove all tools, equipment and materials, and shall thoroughly clean the work site and leave it with a neat, clean appearance to the satisfaction of Railroad.

iii. If Contractor fails to clean up the work site area upon completion of the Crossing Improvements installation, Railroad may do so and the cost thereof shall be billed to the Contractor.

iv. All lawns, plantings, trees, shrubbery and areas adjacent to the Crossing Improvements shall be protected against Contractor traffic, machinery, spillage and misusage, unless Contractor has an agreement with the owner of this property. If at any time during the progress of the Work any lawns, plantings, etc., are damaged or destroyed or any portion of the ground surfaces are damaged, rutted or destroyed, it shall be the Contractor's responsibility to replace and/or restore the damage at no additional expense to the Railroad or the owner of the property.

v. Trailers or storage buildings shall be permitted, where space is available, subject to the prior written approval of Railroad. Failure of Contractor to maintain its trailers or storage buildings in good condition will be considered sufficient reason to require their removal. A sign not smaller than 24 inches by 24 inches shall be conspicuously placed on the trailer depicting the company name, business phone number, and an emergency 24-hour phone number.

vi. Waste produced by Contractor's crews shall be disposed of in a manner that complies with all applicable Federal, State, City, or other regulations and laws.
This includes spent motor oil, lubricants, oil filters, shipping containers, and all other waste items.

Section 2. Railroad Representative

A. Contractor shall coordinate all Work with the following Railroad representative or his duly authorized representative (the "Railroad Representative"):

Zachary Vallos  
System Engineer  
Construction Maintenance  
Great Western Railway of Colorado, L.L.C.  
252 Clayton Street  
Denver, CO 80206  
zvallos@ominitrax.com  
(303) 398-0310

Section 3. Term

A. The grant of right herein made to Contractor shall commence on the date set forth above (the "Effective Date") and shall remain in effect through and including ________________, unless sooner terminated as herein provided or at such time as Contractor has completed its Work on Railroad's property, whichever is earlier. Contractor agrees to notify Railroad's Representative in writing when it has completed its Work on Railroad's property.

Section 4. Termination

This Agreement may be terminated by either party upon giving not less than ten (10) days' written notice to the other party in the event of a default or breach of any of the terms of this grant and the breaching or defaulting party's failure to cure within thirty (30) days' of receipt of written notice of same. In the event of failure to maintain the proper insurance, Railroad has the right to suspend Contractor's Work pending Contractor's compliance thereof.

Section 5. Rail Operations

Contractor warrants that the Work shall not interfere with nor degrade Railroad's safety or the continuous and uninterrupted use and operation of Railroad. The safe operation of Railroad train movements and other activities by Railroad take precedence over any work to be performed by Contractor. Operations of Railroad and work performed by Railroad personnel and delays in the Work to be performed by Contractor caused by such railroad operations and Work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. If the Contractor shall prosecute the Work across or adjacent to the Railroad property contrary to the plans, the provisions of the Crossing Agreement or other guidelines or standards furnished to Contractor, or if the Contractor shall prosecute the Work in a manner deemed hazardous by the Railroad to its personnel, property and facilities, or if the insurance prescribed in Section 6 hereof shall be cancelled during progress of said Work,
the Railroad shall have the right to stop the Work until the acts or omissions of such Contractor have been fully rectified to the satisfaction of the Railroad's System Engineer, or until additional insurance has been delivered to and accepted by the Railroad's Risk Management department. A work stoppage under this Section 5 shall not give rise to or impose upon the Railroad any liability to Contractor.

Section 6.  Insurance

Contractor, if and to the extent that Contractor is performing work on or about GWR’s property, shall purchase and maintain insurance as specified below covering the Work to be performed pursuant to this Agreement and all obligations assumed pursuant to it, from the Effective Date of this Agreement until expiration or termination with insurance companies assigned a current Financial Strength Rating of at least A and Financial Size Category of X or better by A. M. Best Company or an equivalent rating agency approved by Railroad. Contractor shall require all subcontractors likewise to procure and maintain this same insurance unless they are covered by Contractor’s insurance:

A.  Workers’ Compensation Insurance providing Workers’ compensation benefits mandated under applicable state law and employer's liability insurance subject to minimum limits of not less than $1,000,000 Bodily Injury by Accident, Each Accident; $1,000,000 Bodily Injury by Disease, Policy Limit; $1,000,000 Bodily Injury by Disease, Each Employee, and includes a waiver of subrogation in favor of Railroad and the other indemnified parties specified in Section 13.A. (collectively "Indemnified Parties").

B.  Commercial General Liability Insurance subject to limit of $1,000,000 each occurrence for bodily injury, property damage, personal injury and libel and/or slander with an annual aggregate limit of no less than $2,000,000. Policy coverage is to be based on usual Insurance Services Office ("ISO") policy forms, or equivalent, to include, but not be limited to: Operations and Premises Liability, Completed Operations and Products Liability, Personal Injury Liability and Contractual Liability insurance. Any and all General Liability policies procured by Contractor shall be amended to delete any and all railroad exclusions including exclusions for working on or within fifty feet (50') of any railroad property, railroad track, railroad bridge, trestle or tunnel.

C.  Business Automobile Liability Insurance subject to a minimum limit of $1,000,000 each accident for bodily injury and property damage. Policy coverage shall be based on usual ISO policy forms referred to as Business Automobile Policy ("BAP") to cover motor vehicles owned, leased, rented, hired or used on behalf of Contractor.

D.  Umbrella Liability Insurance subject to a limit of $4,000,000 each occurrence for bodily injury, property damage, personal injury and libel and/or slander. Policy coverage is to be at least as broad as primary coverages and include, but not be limited to, Operations and Premises Liability, Completed Operations and Products Liability, Personal Injury Liability, and Contractual Liability insurance. Completed Operations coverage is to be maintained for a period of not less than three (3) years after the expiration or termination of this Agreement.
E. **Railroad Protective Liability Insurance.** Contractor must maintain Railroad Protective Liability ("RPL") insurance written on ISO occurrence form GC 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than $2,000,000 per occurrence and an aggregate of $6,000,000. The definition of "Job Location" and "Work" on the declaration page of the policy shall refer to this Agreement and shall describe all Work or Operations performed under this Agreement. Contractor shall provide this Agreement to Contractor's insurance agent or broker and Contractor shall instruct such agent and/or broker to procure the insurance coverage required by this Agreement. A binder of insurance stating the policy is in place must be submitted to Railroad before work may commence and until the original policy is forwarded to Railroad Representative.

The named insured shall read:

Great Western Railway of Colorado, L.L.C.  
252 Clayton Street, 4th Floor  
Denver, Colorado 80206  
Attn: Risk Management

F. All insurance required of Contractor with the exception of Workers' Compensation and Employers' Liability shall include Railroad, OmniTRAX, and any subsidiary, parent or affiliates of OmniTRAX and their owners, agents, representatives, members, managers, officers, directors, shareholders, and employees as additional insured and include wording which states that the insurance shall be primary and not excess over or contributory with any insurance carried by Railroad, OmniTRAX and its or their affiliates.

G. All insurance shall provide a minimum of thirty (30) days advance written notice of insurer's intent to cancel or otherwise terminate policy coverage.

H. All policies shall be written on an occurrence basis. If Contractor cannot obtain an occurrence based policy for any required coverage, policies may be written on a claims made basis. If any policies providing the required coverage(s) are written on a claims-made basis, the following is applicable:

1. The retroactive date shall be prior to the commencement of the Work.

2. Contractor shall maintain such policies on a continuous basis.

3. If there is a change in insurance companies or the policies are canceled or not renewed, Contractor shall purchase an extended reporting period of not less than three (3) years after the Agreement expiration or termination date.

I. Contractor shall file with Railroad and its affiliates on or before the Effective Date of this Agreement a valid Certificate of Insurance for all required insurance policies. Each certificate shall identify the Railroad, OmniTRAX, its (or their) affiliates and other required parties as set forth above as additional insured, and state that Railroad and its affiliates will receive a minimum of thirty (30) days advance written notice of insurer's intent to cancel or otherwise terminate
policy coverage. Prior to expiration of such insurance, Contractor shall supply updated Certificates of Insurance that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the original Certificates and as required in this Section 6.

J. Contractor hereby waives all rights of subrogation against Railroad, OmniTRAX, its (or their) affiliates, and other required parties as set forth above for damages to the extent covered by insurance. All insurance policies of Contractor shall allow that any release from liability of or waiver of claim for recovery from any other party entered into in writing by Contractor prior to any loss or damage shall not affect the validity of said policy(ies) or the right of the insured or insureds to recover under them.

K. Contractor's or subcontractor's compliance with obtaining the above insurances shall in no way limit the "Liability and Indemnity" afforded to the Indemnified Parties specified in Section 13 below.

Section 7. Safety Program

A. Contractor shall have in place a safety and training program conforming to the requirements of federal, state, local laws and Federal Railroad Administration ("FRA"), rules and regulations, including, without limitation, 49 CFR Parts 214, 232 and 243 (collectively, the "Safety Rules and Regulations") and Railroad's Roadway Worker Protection Program. All employees of Contractor or any subcontractors utilized shall be required to attend Railroad's Roadway Worker Safety and Safety Rules Class prior to their performing any duties related to the Work. Railroad, at its sole option, shall: 1) provide a train the trainer class at no additional cost to Contractor, or 2) arrange for a safety training provider suitable to the Railroad ("Trainer") to provide the class to Contractor and any subcontractors and Contractor shall, at its sole cost and expense, pay directly to the Trainer a charge for each of Contractor's employees or their subcontractors' employees attending such class. Periodic changes to the Safety Rules and Regulations or Railroad's Roadway Worker Protection Program may require additional or repeated training classes. The cost of Contractor's or subcontractors' personnel attending the initial training class or any additional training classes shall be considered as incidental to the Work and Railroad shall make no additional payments to Contractor for participation in these classes. Contractor shall release, defend and indemnify Railroad and OmniTRAX from and against any and all claims, liabilities, damages, losses, costs or expenses, including, without limitation, attorneys' fees and legal costs arising or resulting from Contractors or subcontractors failing to comply with the Safety Rules and Regulations.

B. The use of proper safety devices by all employees of Contractor and employees of any subcontractors utilized by Contractor shall be required and Contractor shall take reasonable actions to enforce the use of safety devices, including traffic control devices as may be required by the federal or state agencies. All employees of Contractor and employees of any subcontractors utilized by Contractor shall meet or exceed Railroad's personal protection equipment ("PPE") requirements. Contractor shall enforce a zero tolerance policy for failure of its employees and subcontractors to use required PPE.
C. Contractor shall develop and administer a drug and alcohol use and testing program that complies with 49 CFR Part 219. Contractor shall submit a copy of its program to Railroad and Contractor shall maintain and administer the program throughout the term of this Agreement. Contractor shall submit the program to Railroad within 10 Days after the receipt of the Notice to Proceed. Contractor shall enforce a zero tolerance policy for drugs and alcohol in the work place.

D. Notwithstanding anything to the contrary in this Agreement, if Contractor or subcontractor is found to be in violation of any Safety Rules and Regulations or any safety rule, regulation or requirement of Railroad, or causes an incident, Railroad reserves the right to notify the Contractor to stop all Work. The Contractor must immediately cease all Work, promptly perform a complete investigation and determine the appropriate remedial actions. Contractor shall provide any documentation to Railroad at Railroad's request. When Railroad, at its sole discretion, is satisfied with Contractor's investigation and remedial actions Railroad shall notify Contractor as to what date the Contractor may return to return to Work. Notwithstanding anything to the contrary in this Agreement, Railroad retains the right, at its sole discretion and at any time, to remove any Contractor or subcontractor employee from the Work and the premises of Railroad. Contractor recognizes and agrees that Railroad shall make no additional payments to Contractor for lost time due to Work stoppage.

E. Contractor and its subcontractors shall utilize the correct equipment for the task as it was designed. All equipment must be fully functional, inspected, and maintained by Contractor to a state that allows Contractor to perform the Work safely and in compliance with all federal, state and local laws, rules, regulations, and industry practices, including Railroad's policies. Railroad may request inspection of Contractor's records and perform equipment audits at any time. Railroad, in its sole judgment, may require that Contractor perform inspections, repairs or changes to the equipment to enable Contractor to safely perform the Work. Contractor agrees to immediately correct the issues as requested by Railroad.

Section 8. Policies & Laws Prohibit All Forms of Harassment

A. Railroad is committed to providing a work environment that is free from all forms of discrimination and conduct that may be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, religion, sexual orientation, gender identity, or any other legally protected characteristic shall not be tolerated. Railroad strongly opposes sexual or other harassment in any form against any employee, vendor, contractor or customer.

B. Contractor must have in place policies and procedures regarding all prohibited forms of harassment. If Railroad determines that the Contractor, subcontractor, or employees of either are in violation of Railroad's policy, Railroad reserves the right to notify the Contractor to stop all Work. The Contractor must immediately cease all Work, promptly perform a complete investigation and determine the appropriate remedial actions. Contractor shall provide any documentation to Railroad at Railroad's request. When Railroad, at its sole discretion, is satisfied with Contractor's investigation and remedial actions Railroad shall notify Contractor as to what date the Contractor may return to return to Work. Notwithstanding anything to the contrary in this Agreement, Railroad retains the right, at its sole discretion and at any time, to remove any
Contractor or subcontractor employee from the Work and the premises of Railroad. Railroad shall make no additional payments to Contractor for lost time due to Work stoppage.

Section 9. Subsurface Installations

Notwithstanding anything to the contrary in this Agreement, Railroad may have previously granted permits to others for certain uses of its property and Contractor hereby acknowledges that absence of markers on Railroad property does not constitute a warranty by Railroad of no subsurface installations. Contractor accepts full responsibility for any and all damages, loss, claims, judgments and recoveries due to Contractor’s operations on Railroad property involving subsurface installation.

Section 10. Recordkeeping

Contractor and each subcontractor shall maintain, for a period not less than five (5) years following the Work completion date, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all funds received from Railroad for the Work.

Section 11. Warranty

Contractor warrants all material used and services performed for a period of three (3) years from acceptance. Notwithstanding the foregoing, if it is determined by Railroad Representative, in his sole judgment, that Contractor’s Work was deficient or material used is deficient and needs to be replaced, then Contractor will correct the deficiencies and replace the material without charge to Railroad. Contractor shall warrant any replaced material for a period of one (1) year from the date of replacement.

Section 12. Flagging

A. Contractor agrees to notify Railroad Representative at least fourteen (14) days in advance of Contractor commencing its Work and at least thirty (30) days in advance of proposed performance of any Work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as but not limited to a crane boom) will reach to within twenty-five (25) feet of any track. Contractor shall provide a detailed schedule of Work to Railroad upon award and must maintain this schedule for the project duration. If the schedule of Work activities changes, the Contractor shall provide an updated schedule in advance of any change. No Work of any kind shall be performed, and no person, equipment, machinery, tool(s), materials(s), vehicles(s), or things(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any Railroad’s track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) days’ notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor’s receipt of billing. If Railroad performs
any flagging or other special protective or safety measures, Contractor agrees that Contractor is not relieved of any of its responsibilities of liabilities set forth in this Agreement.

B. The rate of pay per hour of each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement, and unemployment compensation, supplemental pension, Employee's Liability and Property Damage and Administration will be included, computed on actual payroll. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized government agency.

C. Reimbursement to Railroad will be required covering the full eight hour day during which any flagman is furnished unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days' written notice prior to the cessation of the need for a flagman. If five days' written notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days' written notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 13. Liability and Indemnity

A. CONTRACTOR ASSUMES ALL RISK OF LOSS AND SHALL DEFEND, INDEMNIFY, AND HOLD RAILROAD, OMNITRAX, THEIR OWNERS, PARENT, MANAGEMENT AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, SUCCESSORS, SHAREHOLDERS AND ASSIGNS ("INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES (TOGETHER WITH ALL LIABILITY FOR ANY EXPENSES, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY
CONFERRED) FOR ALL INJURIES OR DEATH OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF EITHER PARTY AND DAMAGE TO THE PROPERTY OF ANY PARTY, TO THE EXTENT OCCASIONED BY ANY ACT OR OMISSION OF CONTRACTOR OR OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR ANY SUBCONTRACTOR AND RESULTING FROM OR ARISING OUT OF THE WORK PERFORMED OR TO BE PERFORMED PURSUANT TO THIS AGREEMENT, EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR THE SOLE GROSS NEGLIGENCE OF THE PARTY SEEKING INDEMNIFICATION.

B. CONTRACTOR FURTHER AGREES TO ASSUME ALL RISK OF LOSS AND TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS ARISING UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, LIABILITIES, DAMAGES, LOSSES, COSTS OR EXPENSES (TOGETHER WITH ALL LIABILITY FOR ANY EXPENSES, REASONABLE ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS AND CAUSES OF ACTION OR IN THE ENFORCEMENT OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED) FOR ALL INJURIES OR DEATH OR DAMAGE TO THIRD PARTIES OR EMPLOYEES OF EITHER PARTY AND DAMAGE TO THE PROPERTY OF ANY PARTY, TO THE EXTENT OCCASIONED BY SEEPAESE CAUSED BY CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY OR FOR CONTRACTOR OR ANY SUBCONTRACTOR WHICH CAUSE OR CREATE POLLUTION, CONTAMINATION OR ADVERSE EFFECTS ON THE ENVIRONMENT, DUE TO, BUT NOT LIMITED TO, THE DISPOSAL OF ANY MATERIAL OR SUBSTANCE, INCLUDING, BUT NOT LIMITED TO, BATTERIES, DISCHARGE, ESCAPE DISPERSAL, RELEASE OR SATURATION OR SMOKE, VAPORS, SOOT, FUMES, ACIDS, ALKALIS, TOXIC CHEMICALS, LIQUIDS, GASES, OR HAZARDOUS SUBSTANCES INTO THE ATMOSPHERE OR ON, INTO OR INTO THE SURFACE OR SUBSURFACE SOIL. CONTRACTOR SHALL NOT BE LIABLE TO THE EXTENT THAT ANY SUCH LIABILITY, LOSS, DAMAGE, COST, OR EXPENSE IS PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR THE SOLE GROSS NEGLIGENCE OF THE PARTY SEEKING INDEMNIFICATION.

C. CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS, AND ASSUME THE COST OF DEFENSE OF THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS, ACTIONS OR LEGAL PROCEEDINGS ARISING FROM THE VIOLATION OR ALLEGED VIOLATION OF ANY LAWS, ORDINANCES, ORDERS OR REGULATIONS BY CONTRACTOR OR ANY OF ITS SUBCONTRACTORS.

Section 14. Contracts and Subcontracts

Contractor shall not be permitted to sublet, assign, sell, transfer or otherwise dispose of this Agreement or any part of it or its right, title or interest in it to any individual, firm or corporation without the prior written consent of Railroad. In the event that Railroad shall grant its written consent to such subletting, assignment, sale or transfer, then the subcontractor, assignee or
purchaser shall be bound by, and shall be deemed to have assumed performance of this Agreement and Contractor shall not be released from its obligations.

Section 15. Confidentiality

Neither party shall, during the term of this Agreement, disclose any confidential information, the disclosure of which would be detrimental to the other party. Contractor may not, without written consent of Railroad, advertise in any manner the fact that Contractor is furnishing to Railroad the services conveyed by this Agreement.

Section 16. Liens

A. Contractor agrees that at no time shall it file or permit the filing of a lien or liens upon the Work, equipment or materials provided by Railroad or the property of Railroad. If, at any time, at the time of acceptance of this Agreement, during the progress of the Work, or thereafter, any indebtedness due a subcontractor of Contractor has become or may become a lien or liens upon said Work, equipment or materials or property of Railroad, Contractor shall immediately pay such claim or indebtedness or otherwise cause such lien to be dissolved and discharged by giving a bond or otherwise. In the case of its failure to do so, Railroad may assert and enforce a claim against Contractor for such claim or indebtedness or declare this Agreement to be cancelled.

B. From time to time during the performance of this Agreement, Contractor may be paying subcontractors furnishing labor, equipment, and materials in full. Concurrent with such payments, Contractor will obtain a general release of all claims against Railroad from each subcontractor and furnish such releases to Railroad. Contractor shall also give Railroad a general waiver of liens for any claims against Railroad relating to any equipment and materials supplied by a subcontractor.

C. After Railroad gives its final acceptance of all Work as provided in Sections 1J above Contractor shall execute and furnish to Railroad a Full Release and Final Waiver of Lien.

Section 17. Force Majeure

At Railroad's sole discretion, the time allowed for the performance of Work may be extended for delays caused by acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or other delays not caused by Contractor's fault or negligence.

Section 18. Right of Inspection

Railroad shall have the unlimited right to make any and all inspections and tests that Railroad, in its sole discretion, deems necessary to ascertain whether Contractor has fully and faithfully performed in accordance with this Agreement. Contractor will provide all support requested by Railroad to perform these inspections and tests.

Section 19. Governing Law
This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, without regard to any conflicts of law provisions of any jurisdiction.

Section 20. Use of Documents

All documents generated by Contractor pursuant to this Agreement are not intended or represented to be suitable for reuse by Railroad or others for any other project or purposes than that for which the same were created.

Section 21. Miscellaneous

A. This Agreement constitutes the entire agreement between the parties respecting the subject matter of it and merges and replaces all prior negotiations, discussions, representations, warranties, offers, promises, and agreements respecting such subject matter.

B. This Agreement may be amended only by a written instrument signed by both parties.

C. No waiver by either party or failure of either party to insist upon full and complete performance by the other party of any of its obligations under this Agreement shall constitute or effect a waiver or release of such party's right to insist on full and complete performance of such obligation in the future.

D. Any legal action against Railroad must begin within thirty (30) days after the cause of action arises.

E. If any party to this Agreement shall institute a legal action or proceeding to interpret or enforce this Agreement, or to obtain damages for breach of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, including such fees and costs for enforcement of any judgment.

Section 22. Notices

Any notice or other communication required or permitted by this Agreement shall be in writing and delivered by first class mail, postage prepaid, or sent by facsimile as follows:

If to Contractor:
Attn: ______________________
___________________________
___________________________
Phone: _____________________
Fax: _______________________

If to Railroad:
Attn: General Counsel
Great Western Railway of Colorado, L.L.C.
252 Clayton Street, 4th Floor
Denver, Colorado 80206
Phone: (303) 398-4500
Fax: (303) 398-4540
IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the date shown above.

[NAME OF CONTRACTOR]

By: ________________________________
Name: ______________________________
Title: ______________________________

GREAT WESTERN RAILWAY OF COLORADO, L.L.C.

By: ________________________________
Name: ______________________________
Title: ______________________________
May 19, 2016

Town of Timnath
c/o TST, Inc.
748 Whalers Way
Fort Collins, Colorado  80525

Attn: Mr. Eric Fuhrman, P.E. (efuhrman@tsinc.com)

Re: Proposal for Construction Observation and Testing
    Summerfields Crossing
    Town of Timnath, Colorado

Mr. Fuhrman:

We are pleased to submit this proposal to provide construction observation and testing services for the Summerfields Crossing Project in Timnath, Colorado. Based on our review of the Construction Plan Set, and the Bid Schedule within the Project Manual provided to us by TST, Inc., we understand this project consists of the extension of Summerfields Parkway from Twin Bridge Drive across the Great Western Railroad. The improvements are anticipated to include approximately 630 linear feet of asphalt paving, installing cast-in-place or pre-cast box culverts with headwalls and wingwalls, curb and gutter, placement of aggregate base course and placement of hot mix asphalt (HMA).

We provide herein a brief introduction of Earth Engineering Consultants, LLC (EEC) to the Town of Timnath, TST, Inc., and to the project design team. EEC is a full service geotechnical engineering consulting firm and an accredited construction materials testing company by AASHTO/CCRL in bituminous mixtures, soils, aggregate and Portland cement concrete. EEC is accredited and complies with laboratories meeting ASTM E329 “Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction” criteria. R18 accreditation documentation is available upon request for your review or can be viewed by visiting their website at http://www.amrl.net for current accreditation status.

We understand the work to be completed by EEC personnel for this project includes observation and field density testing of roadway/embankment fill material, reinforcement observations, testing of subgrade, aggregate base course, and HMA preparation, and testing of cast-in-place concrete for the box culverts (if cast-in-place), sidewalks, trails, curb and gutter, and handicap ramps. Our outlined work scope/cost estimate is attached to this proposal and is based on the estimated quantity take-offs/bid tabulation documents presented within the documents provided to us.
The field observation and testing services by EEC would be performed by Level II and Level III engineering technicians. Those technicians would be directly supervised by a Colorado registered professional engineer. Consulting regarding geotechnical and materials questions which arise during construction can be provided by the project engineer; however, those services are not included in our cost estimate.

Based on the outlined scope of work, we have estimated the cost to provide construction observation and testing services on an hourly rate concept and in general accordance with the project specifications and testing frequencies. For this project we have estimated the cost to be on the order of about $24,315 for the construction materials testing and site observation services as described herein. If the box culverts alternate as pre-cast is chosen, the estimated cost would be reduced by approximately $10,050. Our intent is to provide the CMT/QC site observation and testing services from our local Windsor office, which is approximately 15 miles round trip to the project site.

We put this proposal/scope of services estimate together based on our understanding of the project, estimated quantities provided within the project documents, and the required testing services/frequencies per the Town of Timnath, and/or Larimer County specifications.

EEC will only charge the general contractor and/or assignee for the testing services performed and the time duration to perform the services as required, (i.e., if we have indicated 20 to 40 hours of testing services for any one element, and we only provide 10 to 15 hours or so of services because of excellent communication services by the client, general contractor, any sub-contractors, and EEC, you will only get charged the 10 to 15 hours or so, plus multi-tasking trips and services can provide greater dividends as well). Combining trips to perform field density testing for the various site improvement elements, concrete testing, sample pick-up, and other site observations could reduce the number of trips, and hours involved for these elements.

The stated estimate does not include contingencies for weather problems, design difficulties or other construction difficulties which may arise. For budgetary purposes, considerations could be given to including an approximate 15% contingency for potential unknown circumstances. Invoices will be based on the actual units of work performed using the rates shown on the attached estimate. We recommend an allowance be provided in the budget for additional unanticipated testing.
We appreciate the opportunity to be of service to you on this project. Our General Conditions for providing the outlined services are attached and are considered a part of our proposal. If you have any questions concerning this proposal, or if we can be of further service to you in any other way, please do not hesitate to contact us.

Very truly yours,
Earth Engineering Consultants, LLC

Reviewed by:

Gary J. Higgins
Project Manager

David A. Richer, P.E.
Senior Project Engineer

Attachments: EEC’s AASHTO/AMRL Accreditation Certificate
EEE’s CMT/QC Estimate
EEE’s 2015 Hourly Rate and Unit Price Fee Schedule
EEE’s – General Conditions for Testing Services

NOTICE TO PROCEED

ACCEPTED BY: ________________________________
(Individual)

FOR: ________________________________
(Company)

DATE: ________________________________
American Association of State Highway and Transportation Officials
AASHTO Accreditation Program Certificate of Accreditation

This is to signify that

Earth Engineering Consultants, LLC.
in
Windsor, Colorado

has demonstrated proficiency for the testing of construction materials and has conformed to the minimum requirements established in AASHTO R 18 set forth by the AASHTO Highway Subcommittee on Materials (HSOM).

The scope of accreditation can be viewed on the AAP Directory of Accredited Laboratories on www.amrl.net.

Bud Wright, Executive Director

Moe Jamshidi, AASHTO HSOM Chair
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<th>Item No.</th>
<th>Description of Work (Based on project [SCHEDULES provided])</th>
<th>Ext Plan</th>
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<th>Unit</th>
<th>Unit</th>
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Reinforcement observations for cast-in-place concrete foundation system, interior floor, interior walls, and CP stop, assume 15 hours at 1.10 hours as needed.
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<th>Item No.</th>
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<td>Cas+in-Place Vnegalls</td>
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<td>$630.00</td>
<td>reinforcement observations for cas+ in-place concrete vnegalls, vnegalls, headwall, and headwalls assume 12 tests at 1-1/2 hours as needed</td>
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<td>Level II Technician</td>
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<td>exceeded 20 complete ACI concrete tests (2x4) concrete cas+inplace vnegalls, vnegalls, headwall, and headwalls including slump, air, unit weight, and a minimum of 5 cubes for compressive strength testing (1 per 15' CY) for a maximum of 1 per day, as needed basis none to be performed after concrete is cured, may vary depending upon Schedule Schedule</td>
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<td>reinforcement observations for cas+ in-place concrete foundation system, interior floor, exterior walls, and CIP top plate assume 15 tests at 1-1/2 hours as needed</td>
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<td>exceeded 15 complete ACI concrete tests (2x4) cas+inplace cas+inplace foundation system, interior floor, exterior walls, and CIP top plate 15 cubic yards for compressive strength testing (1 per 15' CY) for a maximum of 1 per day, as needed basis none to be performed after concrete is cured, may vary depending upon Schedule Schedule</td>
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<td>$325.00</td>
<td>$4,875.00</td>
<td>exceeded 15 complete ACI concrete tests (2x4) cas+inplace cas+inplace foundation system, interior floor, exterior walls, and CIP top plate 15 cubic yards for compressive strength testing (1 per 15' CY) for a maximum of 1 per day, as needed basis none to be performed after concrete is cured, may vary depending upon Schedule Schedule</td>
</tr>
<tr>
<td></td>
<td><strong>SUBTOTAL Reduction for Altamira Pre Cast Box Culverts - Summerfield Crossing</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$10,000.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Laboratory Testing Services**

<table>
<thead>
<tr>
<th>Service</th>
<th>Description</th>
<th>Ext. Plan Quantity</th>
<th>Plan Units</th>
<th>Level / Type of Service</th>
<th>Ext. Units</th>
<th>Unit Rate</th>
<th>Total Per Item</th>
<th>Frequency of Testing per Project Specifications, Town of Timnath, and Larimer County</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Standard Proctor sampleiration tests for bench backfill and imported material</td>
<td>4</td>
<td>each</td>
<td>Level I Technician</td>
<td>5.0</td>
<td>$25.00</td>
<td>$100.00</td>
<td>as materials change</td>
</tr>
<tr>
<td></td>
<td>Ad-hoc Tensile Tests for 200 Barry Ashlocks</td>
<td>4</td>
<td>each</td>
<td>Level I Technician</td>
<td>125.0</td>
<td>$5.50</td>
<td>$660.00</td>
<td>as materials change</td>
</tr>
<tr>
<td></td>
<td>Travel at Mileage - Assume 15 miles round trip from our Durham office on Crossroads to the project site in Timnath. (EGC WILL NOT CHARGE FOR TRAVEL time, just MILEAGE costs will be shared equally)</td>
<td>Level I Technician</td>
<td>125.0</td>
<td>miles</td>
<td>$0.55</td>
<td>$66.75</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Failure Project Engineers - Review, Consultation, and monthly progress and compliance reports and meetings as needed</td>
<td>Failure Project Engineers</td>
<td>20.0</td>
<td>hours</td>
<td>$143.00</td>
<td>$2,860.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>SUBTOTAL for Laboratory Testing Services - Summerfield Crossing</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$4,238.75</strong></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL for CID SCHEDULES - Altamira - Summerfield Crossing**

$24,614.75
Earth Engineering Consultants, LLC
FEE SCHEDULE FOR
CONSTRUCTION OBSERVATION / MATERIALS TESTING

PROFESSIONAL AND TECHNICAL PERSONNEL - HOURLY RATES

Principal Engineer (P.E.) ................................................................. $190.00/hr
Senior Project Engineer (P.E.) ......................................................... 140.00/hr
Project Engineer (P.E.) or Project Geologist........................................ 115.00/hr
Field Engineer .............................................................................. 90.00/hr
Structural Steel Inspector / Non Destructive Testing (NDT) Services ... 90.00/hr
Level III Engineering Technician ..................................................... 75.00/hr
Level II Engineering Technician ...................................................... 59.00/hr
Mileage ......................................................................................... (Current Federal Reimbursement Rate)

LABORATORY TESTING - Materials FOB EEC Laboratory

The outlined test items represent commonly requested laboratory test procedures for construction. Testing for a much greater range of procedures can be completed by EEC laboratories and fees for additional items can be provided on request.

Soils and Aggregate

- Standard Proctor ........................................................................ $105.00/ea
- Modified Proctor ....................................................................... 125.00/ea
- Relative Density ......................................................................... 185.00/ea
- Atterberg Limits ........................................................................ 60.00/ea
- Moisture Content/Visual Classification ...................................... 15.00/ea
- Swell/Consolidation .................................................................... 60.00/ea
- Specific Gravity
  - Fine ..................................................................................... $90.00/ea
  - Coarse ................................................................................... 90.00/ea
- Minus 200 Wash ........................................................................ 40.00/ea
- Gradation Analysis - NOT WASHED*
  - Greater than 3" maximum size .............................................. quoted per material
  - 3" to 1" maximum size ......................................................... $120.00/ea
  - Less than 1" maximum size ................................................... 80.00/ea
- Hydrometer Analysis (with gradation) ........................................ 325.00/ea
*Add $40.00 per sample for minus 200 Wash
- Hveem R-Value ......................................................................... 365.00/ea

Concrete and Masonry

- Concrete Compressive Strength (includes disposable cylinders) .... $20.00/ea
- Core Strength (2" to 6" dia, coring and trimming extra) .............. 55.00/ea
- Core Density .............................................................................. 50.00/ea
- Mortar Compressive Strength ..................................................... 25.00/ea
- Grout Compressive Strength ....................................................... 50.00/ea
- Hollow Prism Compressive Strength .......................................... 150.00/ea
- Solid Prism Compressive Strength .............................................. 200.00/ea

Asphalt

- Bitumen Content – Ignition Oven .............................................. $110.00/ea
- Bitumen Content & Gradation ................................................... 185.00/ea
- Core Density (Already Trimmed) ................................................ 50.00/ea
- Rice Value Determination ......................................................... 75.00/ea
- Volumetric Testing (3 Points w/ Rice) ....................................... 375.00/ea

January 1, 2015
EARTH ENGINEERING CONSULTANTS, LLC

GENERAL CONDITIONS FOR TESTING AND OBSERVATION SERVICES

SECTION 1: Scope of Work
EARTH ENGINEERING CONSULTANTS, LLC (EARTH ENGINEERING) shall perform the services defined in the contract and shall invoice the client for those services at the fee schedule rates. Any cost estimates stated in this contract shall not be considered as a firm figure unless otherwise specifically stated in this contract. If unanticipated site conditions are discovered, the scope of work shall change, even as the work is in progress. EARTH ENGINEERING will provide these additional services at the contract fee schedule rate.

Rates for work beyond the scope of this contract and not covered by the contract fee schedule can be provided. EARTH ENGINEERING can perform additional work with verbal authorization, and will provide written confirmation of fees, if requested. All costs incurred because of delays in authorizing the additional work will be billed to the client.

Fee schedules are valid for one year following the date of the contract unless otherwise noted.

SECTION 2: Personal Responsibility
The presence of EARTH ENGINEERING field representatives will be for the purpose of providing observation and field testing. Our work does not include supervision or direction of the actual work of the contractor, his employees or agents. The contractor for this project should be so advised. The contractor should also be informed that neither the presence of our field representative nor the observation and testing by our firm shall excuse him in any way for defects discovered in his work. It is understood that our firm will not be responsible for job or site safety of the project. Job and site safety will be the sole responsibility of the contractor unless contracted to others.

SECTION 3: Meaning of "Observation"
The term "observation" implies only that we would observe the progress of the work we have agreed to be involved with and perform tests, from which to develop an opinion as to whether the work essentially complies with the job requirements.

SECTION 4: Meaning of "Inspection"
The term "inspection" refers to the visual observation of construction to permit EARTH ENGINEERING, as an experienced and qualified professional, to determine that the work, when completed by the Contractor, generally conforms to the Contract Documents. In making such inspections, EARTH ENGINEERING makes no guarantees for, and has no authority or control over, the Contractor's performance or failure to perform the Work in accordance with the Contract Documents. EARTH ENGINEERING has no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of the Work by the Contractor.

SECTION 5: Accuracy of Test Locations and Elevations
The accuracy and proximity of provided survey control will affect the accuracy of in situ test location and elevation determinations. Unless otherwise noted, the accuracy of test locations and elevations will be commensurate only with pacing and approximate measurements or estimates.

SECTION 6: Degree of Certainty of Compliance
With any manufactured product, there are statistical variations in its uniformity, and in the accuracy of tests used to measure its qualities. As compared with other manufactured products, field construction usually has wider fluctuations in both product and test results. Thus, even with very careful observation and testing, it cannot be said that all parts of the product comply with the job requirements. Our proposal is for the Scope of Services requested by our client. The degree of certainty for compliance with project specifications is much greater with full-time observation than it is with intermittent observation.

SECTION 7: Unanticipated Hazardous Materials
It shall be the duty of the owner or his representative to advise EARTH ENGINEERING of any known or suspected hazardous substances which are or may be related to the services provided; such hazardous substances including but not limited to products, materials, by-products, wastes or samples of the foregoing which EARTH ENGINEERING may be provided or obtain performing its services or which hazardous substances exist or may exist on or near any premises upon which work is to be performed by EARTH ENGINEERING's employees, agents or subcontractors.

SECTION 8: Reports and Invoices
EARTH ENGINEERING will furnish electronically transmitted PDF copies of the report(s) to the client and any other designated recipients(s). Hard copies can be furnished upon request.

EARTH ENGINEERING will submit invoices to the client monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from the invoice date. Client agrees to pay a finance charge of one and three-quarters (%1.75%) per month, but not exceeding the maximum rate allowed by law, on past due accounts. If payment in full is not submitted when due, EEC may immediately cease work. EEC shall be entitled to recover attorney fees, court costs and any other cost of collection which is incurred collecting amounts due on this contract.

SECTION 9: Ownership of documents
All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by EARTH ENGINEERING as instruments of service, shall remain the property of EEC, unless there are other contractual agreements.

SECTION 10: Confidentiality
EARTH ENGINEERING shall hold confidential all business or technical information obtained from the client or his affiliates or generated in the performance of services under this agreement and identified in writing by the client as "confidential." EARTH ENGINEERING shall not disclose such information without the client's consent except to the extent required for 1) Performance of services under this agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order or other governmental directive and/or 4) Protection of EARTH ENGINEERING against claims or liabilities arising from performance of services under this agreement. EARTH ENGINEERING'S obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.
SECTION 11: Standard of Care
Services performed by EARTH ENGINEERING under this agreement will be conducted in the manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made or intended by the proposal for consulting services or by furnishing oral or written reports of the findings made.

The client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys or explorations are made by EARTH ENGINEERING and that the data, interpretations and recommendations of EARTH ENGINEERING are based solely upon the data available to EARTH ENGINEERING. EARTH ENGINEERING will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

SECTION 12: Subpoenas
The client is responsible, after notification, for payment of time charges and expenses resulting from our required response to subpoenas issued by any party in conjunction with our work. Charges are based on fee schedules in effect at the time the subpoena is served.

SECTION 13: Limitation of Liability
The client agrees to limit EARTH ENGINEERING'S liability to the owner and all construction contractors and subcontractors on the project arising from EARTH ENGINEERING'S professional acts, errors, or omissions, such that the total aggregate liability of EEC to all those named shall not exceed $50,000 or EARTH ENGINEERING'S total fee for the services rendered on this project, whichever is greater. The owner further agrees to require of the contractor and his subcontractors an identical limitation of EEC's liability for damages suffered by the contractor or the subcontractor arising from EARTH ENGINEERING'S professional acts, errors, or omissions. Neither the contractor nor any of his subcontractors assumes any liability for damages to others which may arise on account of EARTH ENGINEERING'S professional acts, errors, or omissions.

SECTION 14: Insurance and Indemnity
EARTH ENGINEERING represents that it and its employees are protected by worker's compensation insurance and that EARTH ENGINEERING has such coverage under public liability and property damage insurance policies which EARTH ENGINEERING deems to be adequate. It is the policy of EARTH ENGINEERING to require certificates of insurance from all consultants or subcontractors employed by EARTH ENGINEERING. Certificates for all such policies of insurance will be provided to client upon request in writing. Within the limits and conditions of such insurance, EARTH ENGINEERING agrees to indemnify and save client harmless from and against any loss, damage, injury or liability arising from negligent acts of EARTH ENGINEERING or its employees. EARTH ENGINEERING shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance. EARTH ENGINEERING shall not be responsible for any loss, damage or liability arising from any acts by the client, its agents, staff or other consultants employed by others.

EARTH ENGINEERING'S compensation hereunder is not commensurate with potential risk of injury or loss that may be caused by exposures to pollution, hazardous waste or toxic or other dangerous substances or conditions. Accordingly, except as expressly provided in this contract, the client waives any claim against EARTH ENGINEERING and agrees to indemnify and save EARTH ENGINEERING, its agents, and employees harmless from any claim, liability or defence cost for injury or loss sustained by any party from such exposures alleged arising out of or related to EARTH ENGINEERING'S performance of services hereunder.

SECTION 15: Termination
This agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, EARTH ENGINEERING shall be paid for services performed to the termination notice date plus reasonable termination expenses. Expenses of termination or suspension shall include all direct costs of EARTH ENGINEERING required to complete analyses and records necessary to complete its files and may also include a report on the services performed to the date of notice of termination or suspension.

SECTION 16: Assigns
Neither the client nor EARTH ENGINEERING may delegate, assign, sublet or transfer its duties or interest in this agreement without the written consent of the other party.

SECTION 17: Precedence
These Standards, Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding EARTH ENGINEERING'S services.