

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 79, SERIES 2024**

**A RESOLUTION APPROVING THE CONTRACT WITH GREAT WESTERN RAILWAY
OF COLORADO FOR THE MAIN STREET RAILROAD CROSSING PROJECT**

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

WHEREAS attached hereto as **Exhibit A** is the Railroad Crossing Construction and Maintenance Agreement between the Town and Great Western Railway of Colorado, L.L.C. a Colorado limited liability company (GWR), dated December 10, 2024; and

WHEREAS, the Town Council is familiar with the Construction and Maintenance Agreement and finds it to be in the best interest of the Town, its residents, and the general public to enter into the agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval

The required contract and expenditure of funds up to \$136,151 for payment to Great Western Railway of Colorado, LLC is hereby approved, authorized, and ratified to enter into a contract with Great Western Railway of Colorado, LLC for the Main Street Railroad Crossing Project. The required agreements may be finalized by the Town Manager, in consultation with the Public Works Director, Legal Counsel, and other applicable staff or consultant. Any actions taken prior to the execution of this Resolution, that are within the authority conferred hereby, are ratified, confirmed, and approved by the Town Council.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON DECEMBER 10, 2024.

TOWN OF TIMNATH, COLORADO

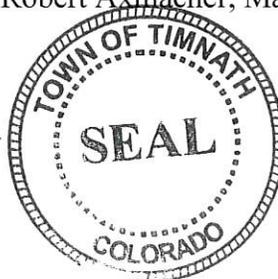


Robert Axmacher, Mayor

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



GWRR File No.: _____
Mile Post 81.24
U.S. DOT Number - 244878F
Greeley Subdivision

RAILROAD CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS RAILROAD CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 16th day of December 2024, 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, the State of Colorado, Department of Transportation ("CDOT") and the Town have determined to improve the grade crossing over the track of GWR at Main Street (County Road 5), located at Milepost 81.24, DOT #244878F of GWR's Greeley Subdivision (the "Crossing") as shown on Exhibit A; and

WHEREAS, CDOT has appropriated federal Section 130 funds for the base signalization of the Crossing as described in that certain State of Colorado Railroad Company Section 130 Agreement by and between CDOT and GWR ("Section 130 Agreement"); and

WHEREAS, the Town seeks to upgrade beyond the work described in the Section 130 Agreement to qualify as a Quiet Zone Crossing and extend the existing crossing, and

WHEREAS, the Town has had designed improvements for the Crossing consisting of crossing gates and an extension of the existing crossing, as depicted in the plans attached Exhibit B, which is incorporated into this Agreement by this reference (the "Plans"); and

WHEREAS, the Town had designed the improvements to qualify as a Quiet Zone Crossing upon completion; and

WHEREAS, on December 14, 2022, the Colorado Public Utilities Commission ("PUC") issued Decision # C22-0803 ("PUC Order"), which approved the installation of the improvements and cost allocation for the project provided for in CDOT's application; and

WHEREAS, GWR is willing, at the Town's expense and pursuant to the PUC Order, to install additional roadway surface crossing panels and install two (2) railroad exit gates, (to make the signals a 4-quadrant to qualify for Quiet Zone requirements) within GWR's right of way (collectively, and as further described in Section 1, the "GWR Work") and

WHEREAS, the Town is willing, at the Town's expense and pursuant to the PUC Order, to install curb, gutter, and sidewalk (collectively, and as further described in Section 4, "Town Work"); and

WHEREAS, the Town has determined to fund the GWR's actual costs to perform the GWR Work as required by the Code of Colorado Regulations, but in no case shall GWR be required to perform the Town Work; and

WHEREAS, the GWR has worked with a qualified contractor to obtain an engineering cost estimate for crossing extension depicted in Exhibit C which is incorporated into the Agreement by this reference; and

WHEREAS, per the PUC decision and the provided cost estimate for the design and construction of the crossing improvements, the Town's portion of the project is estimated at \$136,151, which includes the GWR Work consisting of \$42,000 for additional crossing material for detached sidewalks and \$75,000 for two (2) railroad exit gates, flashers, bells, installed to complete 4-quadrant gate system (the "Crossing Signal Equipment), and the Town Work consisting of \$19,151 for roadway approach concrete, curb, gutter, and sidewalk work; and

WHEREAS, the Town agrees to pay GWR in advance for 50% of the total estimated construction costs for the GWR Work (\$58,500.00) within 30 days after the receipt of the initial pre-construction progress invoice and prior to the start of construction, as defined in Section 2 of this Agreement; and

WHEREAS, the Town and GWR desire to enter into this Agreement to provide for terms and conditions governing construction and maintenance of the Crossing and Crossing Signal Equipment and under which the Town will provide such funding; and

WHEREAS, the Town is informing GWR that upon execution of the Agreement it will be issuing a Notice of Intent to Establish a Railroad Quiet Zone and upon completion of construction it will be issuing a Notice of Quiet Zone Establishment per 49 CFR 222.39(a)(1) to the FRA and other required parties; and

For and 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

1. **Scope of Work.** GWR agrees to perform the GWR Work. The GWR Work generally consists of **extending existing crossing 16.250 feet on both sides of the road for a total of 32.500 ft, and installation of the Crossing Signal Equipment** as shown on the Plans. GWR agrees to begin the GWR Work within forty five (45) days after ordering and receiving the Materials specified on Exhibit C. Provided GWR receives payment from the Town within the time frame specified in Section 2 of this Agreement, and subject to Section 4F of this Agreement, GWR agrees to complete GWR Work as soon as reasonably possible.

2. **Payment.** The Town will make payments to GWR in accordance with the estimated costs of Labor & Materials (\$117,000.00) for the GWR Work as outlined in Exhibit C and the following provisions:

- GWR will submit invoices for the initial pre-construction progress payment (\$58,500.00) and for the remainder of the actual costs incurred.
- If the final costs exceed those described in Exhibit C, Town shall pay those reasonable additional expenses up to a maximum of an additional five percent (5%).
- The Town will reimburse GWR no later than thirty (30) days after receiving properly prepared invoices.
- GWR may use its own forces or enter into an agreement with a qualified contractor to perform the GWR Work.

- GWR may use Materials from inventory (ties, plates, spikes, ballast) to expedite the GWR Work.
- GWR agrees to order the Materials needed to improve the road crossing within forty-five (45) days from the date that this Agreement is executed.

3. [Intentionally deleted.]

4. Town's Obligations. In addition to its obligations under Section 2, Town shall:

- A. Obtain all required permits, approvals, and comply with all applicable federal, state, and local regulations for the construction of the Crossing and the performance of the Town Work.
- B. Acquire all rights of way necessary for the construction of the Crossing and performance of the Town Work.
- C. 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 Crossing and the performance of the Town Work.
- D. Construct the Crossing and perform the Town Work as shown on the attached Exhibits A and B and do all work provided for in the plans and specifications for the Crossing, except for GWR 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:
 - (i) Design and construction of curb, gutter, and sidewalk;
 - (ii) Installation of roadway pavement, stop bars and other pavement markings in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called "MUTCD");
 - (iii) Installation of advance warning signs in accordance with the MUTCD;
 - (iv) Perform all necessary grading and paving included in the Town Work, including backfill of excavations and restoration of disturbed vegetation on GWR's right-of-way;
 - (v) Provide suitable drainage, both temporary and permanent;
 - (vi) Provide all temporary barricades, lights, flagmen or traffic control devices necessary for traffic control during installation of the crossing surface and Crossing Signal Equipment;
 - (vii) Construct asphalt/concrete roadway surface on approaches to the Crossing. 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;

- (viii) Provide and place six (6) to twelve (12) inch wide section of asphalt between roadway concrete and the new concrete crossing surfaces to allow for the maintenance identified in (vii) above;
 - (ix) Clean up any items related to the Town Work, 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;
 - (x) Make and maintain any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Town Work 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 preexisting 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 or work 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 on the Crossing 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 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 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.
- E. 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.
- F. The Town must give GWR written notice to proceed ("Notice to Proceed") with GWR Work after receipt of necessary funds for the project. GWR will not begin GWR Work (including, without limitation, procurement of supplies, equipment or materials) until such Notice to Proceed is received from Town.
- G. 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.

- H. For any future inspection or maintenance, either routine or otherwise, performed by contractors on behalf of the Town within GWR's property, including its right of way, Town shall require its contractors to provide proof of the insurance identified in Section 4.N below and have such insurance policies approved by GWR.
- I. Town must require its contractor(s) to notify GWR at least thirty (30) calendar days prior to requesting a GWR flagman for the beginning of the project. After the initial thirty (30) calendar days' notice, Town may request a GWR flagman upon at least fifteen (15) calendar days' notice. Additionally, Town must require its contractor(s) to notify GWR thirty (30) calendar days prior to commencing work on GWR property or within twenty-five (25) feet of the centerline of GWR tracks.
- (i) If flagging or other special protective or safety measures are performed by GWR, GWR will bill Town for such expenses incurred by GWR. Town shall pay such bills within thirty (30) days of Town's receipt of billing.
 - (ii) 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 GWR and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized government agency.
 - (iii) Reimbursement to GWR will be required covering the full eight-hour day during which any flagman is furnished unless the flagman can be assigned to other GWR 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 GWR 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 GWR is required to pay the flagman and which could not reasonably be avoided by GWR by assignment of such flagman to other work, even though Town may not be working during such time. When it becomes necessary for GWR to bulletin and assign an employee to a flagging position in compliance with collective bargaining agreements, Town must provide GWR 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, Town 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 GWR if flagging services are needed again after such five day cessation notice has been given to GWR.

- J. All Town Work performed hereunder by Town for the Crossing will be pursuant to a contract or contracts to be let by Town, and all such contracts must include the following (or the Contractor shall otherwise agree in writing to all of the following in connection with the project):
- (i) All work performed under such contract or contracts within the limits of GWR's right of way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by GWR;
 - (ii) 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;
 - (iii) No work will be commenced within GWR's right of way until Town, and each of the contractors employed in connection with the Crossing, as applicable, have delivered to and secured GWR's approval of a Contractor's Right of Entry Agreement attached to this Agreement as Exhibit E. The Town's contractor's Right of Entry will be covered by this Agreement, for the total duration of time required to coordinate with GWR and complete the Town's portion of the Work. Due to the time required to coordinate with GWR for their work, the duration required for the Right of Entry is unknown at the time of this Agreement, but the Right of Entry shall not terminate due to time while there is still Work outstanding.
- K. The Town shall perform the project, or cause it to be performed, in compliance with GWR's current edition of the OmniTRAX Public Projects Manual (September 2022) and any guidelines or standards furnished by GWR. Town must advise GWR, in writing, of the completion date of the Crossing within thirty (30) days prior to such completion date. Additionally, Town must notify GWR, 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.
- L. 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, C.R.S. 24-10-101 *et seq.*
- M. Where Town's property adjoins GWR's property, in the vicinity of the 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, including trees and bushes, as identified in the Town landscaping plans shall be allowed.
- N. Town shall purchase and maintain insurance as specified below covering this Agreement, all the work, services, and obligations assumed or performed hereunder, from the date of this Agreement until termination, unless the duration is stated to be otherwise.:
- A. **Commercial General Liability Insurance** written on an occurrence basis subject to limit of \$1,000,000 each occurrence for bodily injury, property damage, personal injury, 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 policy forms to include, but not be limited to: Operations and Premises Liability, Completed Operations and Products Liability, Personal Injury and Advertising Liability, and Contractual Liability Insurance. Completed Operations coverage is to be maintained for a period of not less than three (3) years after the termination or cancellation of this Agreement. General Liability policies procured by Town shall be amended to delete all railroad exclusions including exclusions for working on or within fifty feet (50') of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing (CG 24 17 endorsement or equivalent).

B. 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. If coverage is provided through a monopolistic state fund, a stop-gap endorsement on either the Commercial General Liability or Workers' Compensation Policy is required to meet the Employers' Liability Insurance requirement.

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 Insurance Services Office policy forms referred to as Business Automobile Policy to cover motor vehicles owned, leased, rented, hired or used on behalf of Town. If applicable to this Agreement and applicable under federal law, Town shall provide an MCS 90 endorsement.

D. Umbrella Liability Insurance written on an occurrence basis subject to a limit of \$4,000,000 each occurrence for bodily injury, property damage, personal injury, libel and/or slander. Policy coverage is to be at least as broad as primary coverages. Umbrella coverage is to be maintained for a period of not less than three (3) years after the termination or cancellation of this Agreement. Umbrella Liability shall apply to Commercial General Liability, Employers' Liability, and Business Automobile Liability Insurances.

The required limits of insurance may be satisfied by a combination of Primary and Umbrella or Excess Liability Insurance.

All insurance required of Town with the exception of Workers' Compensation and Employers' Liability shall include GWR and any subsidiary, owner, parent or affiliates of GWR, and their respective partners, successors, assigns, legal representatives, officers, directors, members, managers, agents, shareholders, and employees ("Required Parties") 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 GWR and its affiliates. With respect to Commercial General Liability Insurance, Required Parties shall be included as additional insured for Ongoing Operations and for Completed Operations to the extent permitted by law.

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

If Town cannot obtain an occurrence-based policy for any required coverage, the policy may be written on a claims-made basis with a retroactive date on or before the date of this Agreement. Town shall maintain such policy on a continuous basis. If there is a change in insurance companies or the policy is canceled or not renewed, Town shall purchase an extended reporting period of not less than three (3) years after the agreement termination date.

Town shall file with GWR on or before the date of this Agreement a valid certificate of insurance for all required insurance policies. Each certificate shall identify the Required Parties as additional insured as required and state that GWR shall receive a minimum of thirty (30) days' advance written notice of insurer's intent to cancel or otherwise terminate policy coverage. Town 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 required by this Agreement.

All insurance policies required of Town shall include a waiver of any right of subrogation written in favor of Required Parties.

Notwithstanding the foregoing, Town may self-insure for any of the above-required insurance coverages subject to the requirements specified in this paragraph. Town shall provide GWR with audited financial statements and GWR may, at its discretion, which shall not be unreasonably withheld, deem such financial statements acceptable prior to authorizing Town to self-insure. Town shall provide a letter of self-insurance to GWR specifically stating which lines of coverage are self-insured and the amount of self-insurance maintained. The amount of any excess insurance that attaches to self-insurance below the required limits of insurance shall be identified in the letter and evidenced on a certificate of insurance. This letter of self-insurance shall be signed by Town's Risk Manager or another designated authorized signatory. With respect to Workers' Compensation, Town shall also provide state-issued self-insured authorization documents to GWR, where applicable by state law.

Upon signature of this Agreement and renewal of insurance, if Town fails to maintain or provide evidence to Town of any insurance coverage required under this Agreement, GWR may terminate this Agreement effective immediately.

Town's compliance with obtaining the required insurance coverage shall in no way limit the indemnification rights and obligations specified in this Agreement.

5. Maintenance Obligations. After construction of the Crossing is completed, the Town and GWR acknowledge that their respective maintenance responsibilities shall be as follows:

A. Pursuant to 4 CCR 723-7-7211(i), the Town acknowledges that it shall be obligated to maintain, repair, and replace, at no cost to GWR, the roadway approaches to the Crossing, which shall include all grading, road surfaces and drainage facilities, curb and gutter, sidewalks, and bike paths.

B. Pursuant to 4 CCR 723-7-7211(h), GWR acknowledges that it shall be obligated to maintain, repair, and replace, at no cost to the Town, the Crossing from the outside end of one tie to the outside end of the opposite tie, together with all appurtenances thereto including, but

not limited to, operating facilities, warning devices, flashing light signals, gates, cross bucks, and signage if any such appurtenances are installed by GWR.

6. Funding for Maintenance Costs. 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.

7. 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 Section 8. If the Town ceases to provide funds for its obligations contained in Section 2 or terminates the Agreement pursuant to Section 8, then this Agreement shall be null and void.

8. Termination. This Agreement shall take effect as of the date set forth in the first paragraph hereof, and shall remain in effect until the completion of the Town Work and the GWR Work. Notwithstanding the foregoing, this Agreement may be terminated by either party upon giving not less than ten (10) days written notice to the other party so long as such notice is received by the other party prior to GWR ordering any Materials necessary for or commencing performance of the GWR 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 GWR 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 GWR Work and shall return to the Town the remainder of the funds paid. Within thirty (30) days after completion of the GWR 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.

9. 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 GWR 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.

10. Applicable Law/Attorney's Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

11. 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 hereto.

12. 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 hereto as provided in this Section 12, 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 Town: Town of Timnath, Colorado
 ATTN: Town Engineer
 4750 Signal Tree Drive
 Timnath, CO 80547
 Fax: (970) 224-3217

With a copy to: Town of Timnath, Colorado
 ATTN: Town Attorney
 4750 Signal Tree Drive
 Timnath, CO 80547
 Fax: (970) 224-3217

If to GWR: Great Western Railway of Colorado, L.L.C.
 ATTN: Cassie Rodriguez
 252 Clayton St., Fourth Floor
 Denver, CO 80206

With copies to: Great Western Railway of Colorado, L.L.C.
 ATTN: General Counsel
 252 Clayton St., Fourth Floor
 Denver, CO 80206

13. 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.

14. 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.

15. Amendment or Modification. Any amendments or modifications to this Agreement shall be in writing signed by both parties.

16. Indemnity.

A. 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 THE TOWN OR OF ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY TOWN OR ANY SUBCONTRACTOR AND RESULTING FROM OR ARISING OUT OF THE TOWN 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. 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, ONTO OR 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.
- C. 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.

- D. THE INDEMNIFICATION PROVIDED FOR IN THIS SECTION 16 SHALL BE ENFORCEABLE TO THE EXTENT LIMITED AND AS PERMITTED BY COLORADO LAW.

[signatures follow]

Exhibit A

EXHIBIT A
TOWN OF TIMNATH: MAIN STREET CROSSING
U.S. DOT # 244878F



Agreement No. #[AGREEMENT_NUMBER]#

Exhibit B

PLANS

Exhibit C
TRACK CROSSING ESTIMATE

Great Western Railway Colorado			
Timnath Main St. MP 81.24 #244878F - Crossing Extension			
Fx Rate	1.000		
Taxes	1,090		Total
Currency	USD		
Project Year	2024		Total Project Capital (105,031)
Finance Rep	Jace Masood		Total Funding 105,031
Net Unleveraged Cash Flow			-

Total Internal Labor - - - - -

Material	Qty	Rate	Unit	Curr	Total Cost
Concrete Panels	33	275.00	TF	USD	8,938
Pandrol Pre-plated Ties - 10'	22	275.00	EA	USD	6,050
Pandrol Clips	88	5.00	EA	USD	440
Rail	160	42.00	LF	USD	6,720
Welds	8	350.00	EA	USD	2,800
Ballast	38	48.00	TON	USD	1,824
Total Material					25,772

Contract Services	Qty	Rate	Unit	Curr	Total Cost
Install Crossing	33	2,100.00	TF	USD	68,250
Weld Joints	8	950.00	EA	USD	7,600
					-

Taxes	%	Curr	Rate	Total Cost
Sales Tax	9%	USD	1,090	2,409.44

Total Taxes 2,409

Total Project Cost 105,031

Funding Source	Amount or Percent	Payment Terms	Total Funding
	100%		105,031

Total Funding 105,031

Net Unleveraged Cashflow -

Timnath Main St. MP 81.24 #244878F - Crossing Extension						
Jan	Q1		Q2		Q3	
	Feb	Mar	Apr	May	Jun	Jul
-	-	-	-	(29,181)	(75,850)	-
-	-	-	-	105,031	-	-
-	-	-	-	75,850	(75,850)	-

- - - - -

Jan	Feb	Mar	Apr	May	Jun	Jul
-	-	-	-	8,938	-	-
-	-	-	-	6,050	-	-
-	-	-	-	440	-	-
-	-	-	-	6,720	-	-
-	-	-	-	2,800	-	-
-	-	-	-	1,824	-	-

- - - - - 25,772

Jan	Feb	Mar	Apr	May	Jun	Jul
-	-	-	-	-	68,250	-
-	-	-	-	-	7,600	-

Jan	Feb	Mar	Apr	May	Jun	Jul
-	-	-	-	2,409	-	-

- - - - - 2,409

- - - - - 29,181 75,850

Jan	Feb	Mar	Apr	May	Jun	Jul
-	-	-	-	105,031	-	-

- - - - - 105,031

- - - - - (75,850) 75,850

Exhibit D

[intentionally deleted]

EXHIBIT E

Contractor's Right of Entry Agreement

[see attachment]

LICENSE FOR RIGHT-OF-ENTRY AND USE OF PREMISES

This License Agreement ("License") shall be effective on the last date of signature set forth below (the "Effective Date") by #[CLASS_FULL_LEGAL_NAME]# ("Licensor") and #[CUSTOMER_NAME]# ("Licensee"). Licensor and Licensee may sometimes be referred to individually as a "Party" or collectively as the "Parties."

Licensor hereby permits Licensee to enter upon Licensor's property located at or near the City of #[PROPERTY_CITY]#, County of #[PROPERTY_COUNTY]#, State of #[PROPERTY_STATE]# (the "Premises"), subject to all licenses, easements, encumbrances, and claims of title affecting the Premises and subject to the following terms and conditions:

1. This License is for Licensee's exclusive use and shall not be assignable. Licensor grants this License to Licensee for entry on to the Premises for the sole purpose of #[PURPOSE_OF_AGREEMENT]# at or near Mile Post No. #[MILE_POST_NUMBER]#. As a condition of this License, Licensee shall undertake its use of the Premises in compliance with all federal, state, municipal and local laws and regulations and in a good and workmanlike manner satisfactory to Licensor. Licensor will not execute this License until it receives a signed original from Licensee and in no event is entry permitted until Licensor has executed this License and Licensee has complied with all of the terms and conditions of Section 3 of this License.

Licensor shall have the right, but not the duty, to require Licensee to furnish detailed plans prior to entering the Premises and to view and inspect any activity or work on Licensor's Premises. The review of the plans or the inspection of the activity or work on Licensor's Premises shall in no way reduce Licensee's obligations under this License, nor shall it be considered an acceptance of the suitability of the plans, activities or work by Licensor or deemed to be a waiver of Licensor's rights under this License.

2. The right to enter the property as granted by this License shall commence #[EFFECTIVE_DATE]# and shall remain in effect through the completion of the Work for the Project. Notwithstanding the foregoing, Licensor reserves the right to revoke this License at any time prior to the termination date upon giving not less than twenty-four (24) hours' written notice to Licensee.

Upon termination of this License, Licensee shall remove all of its property, leaving the Premises in a neat and safe condition which is satisfactory to Licensor's Vice President of Engineering or other authorized representative, failing in which Licensor may do so at Licensee's sole cost, risk, and expense.

3. Licensee shall notify Licensor in writing at least seven (7) working days in advance before entering upon or starting any work upon the Premises. No entry or use of the Premises will be permitted until this License is signed, charges hereunder paid, and evidence of the insurance coverage required under Section 8 hereof has been received and accepted by Licensor.

4. All costs associated with Licensee's entry upon and use of the Premises shall be borne solely by Licensee.

5. Any subcontractor, person or entity that Licensee invites or authorizes to enter or work upon the Premises shall be subject to all applicable terms of this License and shall be deemed agents of Licensee. Licensee shall take all necessary means to communicate the applicable terms of this License to the person or entity it invites or authorizes upon the Premises prior to their entry onto the Premises.

6. Licensee shall work only in such area(s) of the Premises as Licensor designates.

7. Licensee acknowledges that persons and property on or near the Premises, whether during construction, installation, use, maintenance or relocation are in constant danger of injury, death or destruction, incident to the operation of the railroad tracks, whether by Licensor or others and Licensee confirms that it is aware of such dangers and accepts this License subject to such dangers.

- A. LICENSEE, AS FURTHER CONSIDERATION AND AS A CONDITION WITHOUT WHICH THIS LICENSE WOULD NOT HAVE BEEN GRANTED, AGREES TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND ANY OWNER, SUBSIDIARY, PARENT AND AFFILIATES OF LICENSOR, AND THEIR RESPECTIVE PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SHAREHOLDERS, EMPLOYEES AND AGENTS (EACH INDIVIDUALLY AN "INDEMNITEE" AND COLLECTIVELY THE "INDEMNITEES") AND TO ASSUME ALL RISK, RESPONSIBILITY, AND LIABILITY FOR DEATH OF, OR INJURY TO, ANY PERSONS, INCLUDING, BUT NOT LIMITED TO, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, PATRONS, INVITEES AND LICENSEES OF THE PARTIES, AND FOR LOSS, DAMAGE OR INJURY TO ANY PROPERTY, INCLUDING BUT NOT LIMITED TO, THAT BELONGING TO THE PARTIES (TOGETHER WITH ALL LIABILITY FOR ANY EXPENSE, ATTORNEYS' FEES AND COSTS INCURRED OR SUSTAINED BY THE INDEMNITEES, WHETHER IN DEFENSE OF ANY SUCH CLAIMS, DEMANDS, ACTIONS, SUITS AND CAUSES OF ACTION OR IN THE ENFORCEMENTS OF THE INDEMNIFICATION RIGHTS HEREBY CONFERRED) ARISING FROM, GROWING OUT OF, OR IN ANY MANNER OR DEGREE DIRECTLY OR INDIRECTLY CAUSED BY, ATTRIBUTABLE TO, OR RESULTING FROM THE GRANT OR EXERCISE OF THIS LICENSE OR THE CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, ALTERATION, CHANGE, RELOCATION, EXISTENCE, PRESENCE, USE, OPERATION OR REMOVAL OF ANY STRUCTURE INCIDENT THERETO, OR FROM ANY ACTIVITY CONDUCTED ON OR OCCURRENCE ORIGINATING ON THE AREA COVERED BY THE LICENSE, EXCEPT TO THE EXTENT CAUSED BY THE SOLE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNITEE SEEKING INDEMNIFICATION.
- B. THE RISKS OF INJURY TO OR DEATH OF PERSONS AND LOSS OR DAMAGE TO PROPERTY HEREIN ASSUMED BY LICENSEE, SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, CONTRACTORS, EMPLOYEES OR INVITEES OF EITHER OF THE PARTIES HERETO, AND WHETHER SUCH INJURY TO OR DEATH OF PERSONS SHALL ARISE UNDER ANY WORKERS' COMPENSATION ACT OR FEDERAL EMPLOYERS LIABILITY ACT.
- C. LICENSEE, FOR ITSELF, AND FOR ITS HEIRS, SUCCESSORS, ASSIGNS, OFFICERS, AGENTS, CONTRACTORS, AND EMPLOYEES, DOES HEREBY AGREE TO PROTECT, DEFEND, AND INDEMNIFY THE INDEMNITEES FROM, AND TO REIMBURSE THE INDEMNITEES FOR, ANY AND ALL LIABILITY AND DAMAGES ARISING OUT OF THE RISKS HEREIN ASSUMED BY LICENSEE, INCLUDING CLAIMS, JUDGMENTS, COSTS, ATTORNEYS' FEES, AND ALL OTHER JUDGMENTS ARISING FROM ANY LIABILITY ASSUMED BY LICENSEE HEREIN.
- D. LICENSEE SHALL, AT ITS SOLE EXPENSE, JOIN IN OR ASSUME, AT THE ELECTION AND ON THE DEMAND OF LICENSOR, THE DEFENSE OF ANY CLAIMS, DEMANDS, ACTIONS, SUITS AND CAUSES OF ACTION ARISING UNDER THIS LICENSE. THE WORD LICENSOR AS USED IN THIS INDEMNITY SECTION SHALL INCLUDE THE ASSIGNS OF LICENSOR AND ANY OTHER RAILROAD COMPANY THAT MAY BE OPERATING UPON AND OVER THE TRACKS IN THE VICINITY OF THE LICENSE AREA.

8. Licensee shall purchase and maintain insurance as specified below covering this License, all the work, services, and obligations assumed or performed hereunder, from the Effective Date until termination, unless the duration is stated to be otherwise, with insurance companies assigned a current Financial Strength Rating of at least A and Financial Size Category of X by A. M. Best Company:

- A. **Commercial General Liability Insurance** written on an occurrence basis subject to limit of \$1,000,000 each occurrence for bodily injury, property damage, personal injury, 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 policy forms to include, but not be limited to: Operations and Premises Liability, Completed Operations and Products Liability, Personal Injury and Advertising Liability, and Contractual Liability Insurance. Completed Operations coverage is to be maintained for a period of not less than three (3) years after the termination or cancellation of this License. General Liability policies procured by Licensee shall be amended to delete all railroad exclusions including exclusions for working on or within fifty feet (50') of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing (CG 24 17 endorsement or equivalent).
- B. **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. If coverage is provided through a monopolistic state fund, a stop-gap endorsement on either the Commercial General Liability or Workers' Compensation Policy is required to meet the Employers' Liability Insurance requirement.
- 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 Insurance Services Office policy forms referred to as Business Automobile Policy to cover motor vehicles owned, leased, rented, hired or used on behalf of Licensee. If applicable to this License and applicable under federal law, Licensee shall provide an MCS 90 endorsement.
- D. **Umbrella Liability Insurance** written on an occurrence basis subject to a limit of \$4,000,000 each occurrence for bodily injury, property damage, personal injury, libel and/or slander. Policy coverage is to be at least as broad as primary coverages. Umbrella coverage is to be maintained for a period of not less than three (3) years after the termination or cancellation of this License. Umbrella Liability shall apply to Commercial General Liability, Employers' Liability, and Business Automobile Liability Insurances.

The required limits of insurance may be satisfied by a combination of Primary and Umbrella or Excess Liability Insurance.

All insurance required of Licensee with the exception of Workers' Compensation and Employers' Liability shall include Licensor and any subsidiary, owner, parent or affiliates of Licensor, and their respective partners, successors, assigns, legal representatives, officers, directors, members, managers, agents, shareholders, and employees ("Required Parties") 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 Licensor and its affiliates. With respect to Commercial General Liability Insurance, Required Parties shall be included as additional insured for Ongoing Operations and for Completed Operations to the extent permitted by law.

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

If Licensee cannot obtain an occurrence based policy for any required coverage, the policy may be written on a claims-made basis with a retroactive date on or before the Effective Date of this License. Licensee shall maintain such policy on a continuous basis. If there is a change in insurance companies or the policy is canceled or not renewed, Licensee shall purchase an extended reporting period of not less than three (3) years after the License termination date.

Licensee shall file with Licensor on or before the Effective Date of this License a valid certificate of insurance for all required insurance policies. Each certificate shall identify the Required Parties as additional insured as required and state that Licensor shall receive a minimum of thirty (30) days' advance written notice of insurer's intent to cancel or otherwise terminate policy coverage. Licensee 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 required by this License.

All insurance policies required of Licensee shall include a waiver of any right of subrogation written in favor of Required Parties.

Notwithstanding the foregoing, Licensee may self-insure for any of the above-required insurance coverages subject to the requirements specified in this paragraph. Licensee shall provide Licensor with audited financial statements and Licensor may, at its discretion, which shall not be unreasonably withheld, deem such financial statements acceptable prior to authorizing Licensee to self-insure. Licensee shall provide a letter of self-insurance to Licensor specifically stating which lines of coverage are self-insured and the amount of self-insurance maintained. The amount of any excess insurance that attaches to self-insurance below the required limits of insurance shall be identified in the letter and evidenced on a certificate of insurance. This letter of self-insurance shall be signed by Licensee's Risk Manager or another designated authorized signatory. With respect to Workers' Compensation, Licensee shall also provide state-issued self-insured authorization documents to Licensor, where applicable by state law.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent or broker who has been instructed by Licensee to procure the insurance coverage required by this License. Upon signature of this License and renewal of insurance, if Licensee fails to maintain or provide evidence to Licensor of any insurance coverage required under this License, Licensor may terminate this License effective immediately.

Licensee's compliance with obtaining the required insurance coverage shall in no way limit the indemnification rights and obligations specified in this License.

9. Licensee shall comply, at its sole cost and expense, with all applicable laws, regulations, rules, and orders with respect to the use of the Premises, regardless of when such become effective.

10. Regarding its use of the Premises, Licensee acknowledges that the safe and uninterrupted operation of Licensor's trackage takes precedence over Licensee's use of the Premises, and to the extent possible, Licensee's use of the Premises shall not interfere with the movement of any trains or other operations of Licensor. If such interference is necessary, Licensee shall not proceed until having first obtained specific authority and directions from Licensor.

11. If, in the opinion of Licensee or Licensor, conditions warrant at any time, Licensor or Licensor's contractor will provide flag service and protection at the expense of Licensee and Licensee will pay to Licensor or Licensor's contractor the full cost and expense for said flag service and protection within thirty (30) days of receiving an invoice for same.

12. All equipment working on or material in use upon the Premises shall be kept at all times not less than fifteen feet (15') from the nearest live rail of any track or such other distance as Licensee is subsequently notified in writing of by Licensor. Licensee shall conduct its operations so that no part of its equipment shall foul an operating track, transmission, signal or communication line or any other structure of Licensor.

Licensee shall at no time cross Licensor's property or track(s) with vehicles or equipment of any kind or character except at an existing and open public grade crossing.

13. Licensee shall pay in full for all materials joined or affixed to the Premises and shall pay in full all persons who perform labor on its behalf on the Premises. Licensee shall not suffer any mechanics' or materialmens' liens of any kind to be filed on or enforced against the Premises for any work done or materials furnished at Licensee's request. If any such liens are filed thereon, Licensee shall indemnify Licensor against such liens and shall immediately remove the same at its sole cost and expense, and shall pay any judgment which may be entered thereon or thereunder. Should Licensee fail, neglect, or refuse to do so, Licensor shall have the right to pay any amount required to release any such liens, or to defend any action brought thereon, and to pay any judgment entered therein and Licensee shall be liable to Licensor for all costs, damages, attorneys' fees and any amounts expended in defending any proceedings or in the payment of any said liens or any judgment obtained for them.

14. If any property or facility of Licensor is endangered by Licensee's entry upon or use of the Premises, Licensee shall notify Licensor immediately by telephone and in writing. If any facility of Licensor is damaged as a result of Licensee's entry upon or use of the Premises, Licensee shall, upon presentation of a bill, reimburse Licensor for any costs expended to repair or replace the facility within thirty (30) days of having received the bill.

15. All of the obligations, representations, and warranties of Licensee accruing under this License during the existence of this License or any renewal or extension of it shall survive this License's termination or expiration.

16. All dollar amounts are in U.S. dollars.

17. Except as otherwise expressly set forth in this License, all notices, demands and other communications required or permitted by this License to be given or delivered under or by reason of the provisions of this License shall be in writing and shall be deemed to have been given (a) when given and received if delivered in person, (b) three (3) business days after mailing by first-class mail, registered or certified, return receipt requested, charges prepaid, or (c) one (1) business day after being sent by overnight courier, charges prepaid, to the Parties, in each case at the following addresses:

Licensor: #[CLASS_FULL_LEGAL_NAME]#
ATTN: Real Estate
252 Clayton Street, 4th Floor
Denver, Colorado 80206

Licensee: #[CUSTOMER_NAME]#
ATTN: #[CUSTOMER_CONTACT]#
#[CUSTOMER_ADDRESS]#
#[CUSTOMER_CITY]# , #[CUSTOMER_STATE]#
#[CUSTOMER_ZIP_CODE]#
#[CUSTOMER_EMAIL]#

WITH A COPY TO:
ATTN: General Counsel

252 Clayton Street, 4th Floor
Denver, Colorado
80206

18. The failure of Licensor to seek redress for any violation of or to insist upon the strict performance of any of the terms, covenants or conditions of this License or any of the rules and regulations from time to time issued

by Licensor, shall not prevent a subsequent act, which would have originally constituted a violation, from having all of the force and effect of an original violation.

19. Licensor's remedies under this License shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other remedy.

20. Licensor shall not be responsible for any loss, damage, delay or non-performance caused by fire, accidents, strikes, labor difficulties, acts of God, riots, war, acts of terrorism governmental action or regulation or by any other cause which is reasonably unavoidable or beyond its reasonable control.

21. Licensee agrees that it shall not register this License or any notice or reference in respect of this License against title.

22. This License constitutes the full and final agreement and understanding of the Parties with respect to the subject matter hereof. This License supersedes and cancels all prior and contemporaneous oral representations, statements, promises, agreements, understandings of the parties regarding the subject matter hereof. This License shall not be amended, modified or canceled unless such amendment, modification or cancellation is set forth in a written instrument signed by all Parties. No Party shall be deemed to have waived any provision of this License unless such waiver is reduced to a written instrument signed by the Party to be charged.

23. All Exhibits attached to this License are incorporated as if fully set forth herein.

24. If any provision of this License is deemed invalid or unenforceable, the validity and enforceability of all other provisions hereof shall not be affected thereby.

25. This License shall be governed under the laws of the State of #[PROPERTY_STATE]#, excluding #[PROPERTY_STATE]#'s conflicts of law principles or statutes, and venue shall be proper in the federal or state courts of the State of #[PROPERTY_STATE]# for any action arising under the terms of this License or performance of it.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this License as of the last date of execution set forth below:

Licensor: #[CLASS_FULL_LEGAL_NAME]#	Licensee: #[CUSTOMER_NAME]#
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: