

EXHIBIT "C"

Contractor's Right of Entry Agreement

Exhibit C

Contractor's Right of Entry Agreement

This Agreement ("Agreement") is entered into this _____ day of _____, 2019 by and between _____ ("Contractor") and **GREAT WESTERN RAILWAY OF COLORADO, LLC** ("Railroad").

RECITALS

Contractor has been hired by the CITY of Greeley (the "CITY") to perform work relating to crossing improvements at up to five (5) at-grade railroad crossings in the CITY (the "Work") with all or a portion of the Work to be performed on property of Railroad on Railroad's Greeley Subdivisions, between Mileposts 93.31 to 97.96 as shown on Exhibit A, Railroad Location print, and as detailed on the Plans marked Exhibit B, which is part of the Quiet Zones Improvements Installation Agreement dated June _____, 2019, by and between the CITY of Greeley and Great Western Railway of Colorado, LLC..

Railroad is willing to permit Contractor to perform the Work described above 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 Exhibit A, 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 and CITY 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 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 B to this Agreement and to the written satisfaction and acceptance of Railroad and the CITY.

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 B to this Agreement unless such changes have been approved in writing by Railroad Representative and the CITY.

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 and the CITY 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 representative of the Railroad and the CITY.

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 the CITY 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 misuse, 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, LLC
252 Clayton Street
Denver, CO 80206
zvallos@omnitrax.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 and, in the case of notice issued by the Railroad, simultaneous notice to the CITY, 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 Project Work across or adjacent to the Railroad property contrary to the Plans, the provisions of Exhibit C, Exhibit F, or other guidelines or standards furnished to CITY, or if the Contractor shall prosecute the installation of Crossing Improvements in a manner deemed hazardous by the Railroad to its personnel, property and facilities, or if the insurance prescribed in Exhibit C hereof shall be cancelled during progress of said work, the Railroad shall have the right to stop the installation of Crossing Improvements across or adjacent to Railroad property 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 shall not give rise to or impose upon the Railroad any liability to the CITY or any Contractor. In the event the Railroad shall stop the installation of Crossing Improvements, the Railroad shall give immediate notice thereof, in writing, to the CITY in accordance with Article VI, paragraph 8.

Section 6. Insurance

Contractor 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 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 12.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, LLC
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 12 below.

Section 7. Safety Program

A. Safety of personnel, property, rail operations, and the public is of paramount importance in the performance of the Work performed by Contractor. Contractor shall be responsible for initiating, maintaining, and supervising all safety operations and programs in connection with the Work. Contractor shall have in place a safety program conforming to the requirements of federal, state and local laws, rules and regulations, including the

FRA's Roadway Worker Protection regulations – 49 CFR 214, Subpart C – and Railroad's Roadway Worker and Bridge Worker Protection Program. All employees of Contractor or any subcontractors utilized by Contractor will be required to attend Railroad's Roadway Worker Safety and Safety Rules Class prior to their performing any duties related to the Work. Railroad will provide the class at no additional cost to Contractor. The cost of Contractor's personnel attending this class will be considered as incidental to the Work and no additional payments will be made to the Contractor.

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.

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 the CITY and Contractor shall maintain and administer the program throughout the term of this Agreement.

D. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

Section 8. 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 9. 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 the CITY for the Work.

Section 10. Warranty

Contractor warrants all material used and services performed for a period of three (3) year 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 11. 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, unless Railroad and CITY have agreed that Railroad is to bill such expenses to the CITY. 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 12. 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 SEEPAGE 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, ONTO 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 13. 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 14. 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 15. 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 withhold any money due Contractor until such claim or indebtedness is paid or may apply such money toward the discharge thereof, or assert and enforce a claim against Contractor for such claim or indebtedness or declare this Agreement to be cancelled, take possession and control of the Work and complete the same or cause the same to be completed in accordance with the terms and conditions of this Agreement.

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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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, LLC

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.

By: _____

Name: _____

Title: _____

GREAT WESTERN RAILWAY OF COLORADO, LLC

By:  _____

Name: Hubert Cassner

Title: Manager, CFO