

## PRELIMINARY ENGINEERING AGREEMENT

BNSF File #: BF10014991  
Front Range Sub  
MP 77.16  
LS 476  
Fort Collins, Colorado

This Preliminary Engineering Agreement ("Agreement") is entered into effective as of May 10<sup>th</sup>, 2019, by and between City of Fort Collins ("AGENCY"), and BNSF RAILWAY COMPANY ("RAILROAD").

### RECITALS:

WHEREAS, RAILROAD operates a freight transportation system by rail with operations throughout the United States and Canada;

WHEREAS, the AGENCY seeks to modify an existing roadway at Timberline Rd (DOT 244647X) across the RAILROAD near Fort Collins, CO;

WHEREAS, a portion of the AGENCY'S Project involves work performed on, over, under, and/or adjacent to the RAILROAD right of way, including roadway modifications and the addition of an interconnected traffic signal; and

WHEREAS, the AGENCY is obligated to reimburse the RAILROAD for all or part of the costs incurred by the RAILROAD undertaking plan review as herein described.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

### ARTICLE I SCOPE OF WORK:

1. The term "**Project**" as used herein includes any and all work related to the RAILROAD review of AGENCY plans.
2. RAILROAD will authorize a third party consultant to complete the review of AGENCY plans for RAILROAD.
3. AGENCY will pay actual costs of RAILROAD consultant review of plans estimating a total of \$21,000.

### ARTICLE II PAYMENT OF FEES:

The AGENCY, in consideration of the faithful performance of the work to be done by the RAILROAD, agrees to pay the RAILROAD actual direct and related indirect costs accumulated, which includes the design portion of the attached proposal with an estimated cost of \$21,000.

In the course of the review, should RAILROAD have reasonable belief that the estimated cost will be exceeded, RAILROAD will notify the AGENCY and is authorized to stop work until the parties have entered into a written addendum amending the amount the AGENCY can pay under this Agreement. However, this paragraph is in no way intended to modify the AGENCY'S obligation to reimburse BNSF for 100% of the costs incurred by the RAILROAD pursuant to this Agreement.

Following the execution of the Agreement, progress billings may be submitted to the AGENCY to cover costs incurred and the AGENCY shall pay such progress billings promptly upon receipt. Progress bills are not to be submitted more frequently than one (1) per month.

Final and detailed billing for all incurred costs associated with this work shall be made by the RAILROAD and furnished to the AGENCY within one (1) year of Project completion, and the AGENCY shall pay all eligible amounts of such bill, less progress payments previously made, within sixty (60) days of final billing.

The parties agree that payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit all required adjustments will be made and reflected in a final payment by either party. In the event that such final audit reveals an overpayment to the RAILROAD, the RAILROAD agrees to refund such overpayment to the AGENCY within 60 days of agreement to audit findings.

During the progress of the work and for a period not less than three (3) years from the date of final payment to the RAILROAD, the records and accounts pertaining to the work of the Project and accounting therefore are to be kept available for inspection and audit by the Agency and/or Federal Government and copies of all records, accounts, documents, or other data pertaining to the Project will be made available at all reasonable times upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all dispute, litigation, claim or audit finding has been resolved even though such dispute, litigation, claim or audit continues past the three (3) year retention period.

No liability shall attach to the AGENCY or the RAILROAD solely by reason of entering into this Agreement except as expressly provided herein.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., or under any other law. The City's obligations under this Agreement are subject to annual appropriation by City Council and shall not constitute or give rise to a general obligation or other indebtedness of the City within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against the City in an ensuing fiscal year beyond the current fiscal year. Notwithstanding the foregoing, the funds required to complete this Project have been properly approved and appropriated for the current fiscal year.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as the dates below indicated.

EXECUTED by the Railroad this 10<sup>th</sup> day of May, 2019

BNSF RAILWAY COMPANY

By: 

Title: Manager Public Projects

EXECUTED by the AGENCY this 8<sup>th</sup> day of May, 2019

City of Fort Collins

By: 

Title: City Engineer