

**LICENSE AGREEMENT FOR RAILROAD SIGNAL EQUIPMENT**

This License Agreement (the “License”) is entered into on \_\_\_\_\_, by and between the **CITY OF FORT COLLINS**, a Colorado municipal corporation, whose address is 300 LaPorte Avenue, Fort Collins, CO 80521 (“Licensor” or “City”) and **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address is 2650 Lou Menk Drive, Fort Worth, TX 76131 (“Licensee” or “BNSF”) (collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the Licensor is the owner of real property in Fort Collins, Larimer County, Colorado, being that portion of the sixty foot (60’) right-of-way for North Timberline Road located south of the southern boundary of Licensee’s property, being more particularly shown in Exhibit A, attached hereto and incorporated herein (“Property”); and

**WHEREAS**, the Licensee is the owner and operator of a line of railroad in and through the City of Fort Collins, State of Colorado; and

**WHEREAS**, on August 14, 2023, the Licensor and Licensee entered into a Construction and Maintenance (“C&M”) Agreement related to the acquisition and installation of railroad crossings signals and activation equipment within the Licensee’s right of way; and

**WHEREAS**, the Licensee is the owner and operator of supplemental safety measures including but not limited to: crossing signal equipment and crossing signal control house (e.g. gates, flashers, a radar system, and a signal bungalow) (defined as “Railroad Signal Equipment”); and

**WHEREAS**, the Licensor finds that the Licensee’s use for the Property, subject to the limitations listed herein, is in the best interests of the Licensor, would not impair or impede the current use, and would not impact the integrity of existing infrastructure located on, about, or under the Property and Licensed Area (as defined herein); and

**WHEREAS**, under the Fort Collins Charter, Article XI, Section 10, the City Council may grant a permit at any time for the use or occupation of any street, alley, or public place, and such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit; and

**WHEREAS**, the Licensor is willing to grant a license to the Licensee under the terms, conditions, and limitations as specified herein and subject to the C&M Agreement, which is incorporated herein.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the mutual promises contained in this License, in light of the foregoing Recitals, which the Parties hereby adopt as facts, and subject to the

covenants, conditions, and limitations hereinafter set out, Licensor and Licensee agree as follows:

1. Grant of License. Subject to the terms and conditions set forth herein, the Licensor hereby grants to Licensee a license to construct, operate, and maintain Railroad Signal Equipment, in the areas shown on Exhibit A as “Premises,” being six hundred (600) square feet, more or less, of the Property (the “Licensed Area”). The License granted herein is subject to all existing utility easements and public improvements, if any, located on, over, under, or across the Property. The License granted herein is subject to facilitating the regular flow of traffic unobstructed by gates or the crossing arm except as required for passage of trains. Installation of the Railroad Signal Equipment is described in plans (the “Plans”), attached hereto and incorporated herein as Exhibit B, that have been prepared by the Licensee and reviewed and approved by the Licensor and the Federal Railroad Administration before Licensee’s entry onto the Licensed Area. The complete plan set for the Railroad Signal Equipment is Exhibit B to this License, but, for purposes of recordation and execution, only the cover page is attached hereto. Exhibit B in its entirety with this License is on file with the City of Fort Collins Engineering Department.
2. Consideration. This License is granted in consideration of the mutual promises set forth herein and other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge.
3. Term. The License shall remain in place so long as the Railroad Signal Equipment remains installed. This License may be terminated at any time solely at the discretion of either Party, based on and subject to Fort Collins Charter, Article XI, Section 10, by providing written notice of termination to Licensee at least ninety (90) days before the anticipated date of such termination.
4. No Interest In Land. Licensee understands, acknowledges, and agrees that this License does not create an interest or estate in Licensee’s favor in the Licensed Area or Property. The Licensor retains all legal interest within the Property and Licensed Area. This License merely grants the Licensee the privilege of entering upon the Licensed Area to conduct activities in accordance with this License.
5. Limitation in Scope. The License granted to the Licensee is limited in scope and the work performed shall be as provided for in the Plans approved by Licensor. Licensee may permit Licensee’s employees, business invitees, contractors, subcontractors, and agents to use the Licensed Area in accordance with the terms and conditions stated herein.
6. Terms and Conditions.
  - a. Except as otherwise approved by Licensor, Licensee must work entirely within the Licensed Area boundary. If Licensee desires to make additional uses of the Licensed Area or desires to make use of additional property owned by Licensor outside the Licensed Area, Licensee must request approval from Licensor at least ten (10) days in advance of intended use, and Licensee shall not begin any additional uses until receiving Licensor’s approval in writing, which shall be granted by the acting City Engineer or appropriate designee.

- b. Any and all access on, over, under, across and to the Licensed Area shall be along existing access roads and only under dry conditions, unless the Licensor provides written consent for alternative access.
- c. Licensee shall not grade or otherwise improve, modify, or destroy existing improvements within the City right-of-way, unless otherwise noted in the approved Plans.
- d. Licensee shall also be responsible for proper disposal of all waste materials and shall provide litter and sanitation control and properly manage any waste fluids and toxic substances caused by, related to, or arising out of, Licensee's exercise of the rights under this License.
- e. The width and scope of any disturbance shall be kept to an absolute minimum within the Licensed Area. Absolutely no disturbance is allowed outside the uses permitted herein, including storage, maintenance of, and operation of construction vehicles, equipment and/or materials within the Licensed Area or upon the Property.
- f. Licensee shall accurately delineate the areas it shall travel and impact before any construction. Licensee agrees that all flagging and markers will be removed after construction is completed, but not before Licensor's post-construction inspection and approval of site reclamation.

7. Maintenance.

- a. Licensee shall assume full responsibility, and at Licensee's sole expense, for maintaining the Licensed Area and any Railroad Signal Equipment within the Licensed Area and any improvements and personal property the Licensee has placed or will place within the Licensed Area, in accordance with all applicable ordinances, codes, and regulations.
- b. Licensee shall be liable and responsible for all damage to or destruction of the Property, Licensed Area, or any public improvements, infrastructure, and natural features located thereon, caused by, related to, or arising out of, Licensee's exercise of the rights under this License. If that Licensee's use of the Licensed Area causes any damage or destruction, Licensee will remediate the damage to a condition substantially similar to its condition at the signing of this License and to Licensor's satisfaction, unless Licensor and Licensee agree otherwise in writing. Licensor may exercise immediate reasonable enforcement, restoration, and conservation actions when such actions are warranted for the protection and preservation of the Licensed Area or Property, or a portion thereof.
- c. If that Licensee situates any improvements on or affixes them to the aforementioned Licensed Area, Licensee shall keep said improvements in good and workmanlike repair, and shall maintain the improvements with regularity and reasonable means,

and in reasonable manner.

8. Licensors Use. The Licensor reserves the right to use the Licensed Area for purposes consistent with the rights and privileges herein granted to Licensee and which will not interfere with or endanger any of Licensee's improvements therein or use thereof. The Parties shall work in good faith to minimize any potential interference between Licensee and ongoing use of the Licensed Area and Property, or any portion thereof by the Licensor and/or its agents or assigns.

9. No Mechanic's Liens. Nothing contained herein shall authorize Licensee, or any person or entity acting through, with or on behalf of Licensee, to subject the Property, Licensed Area, or any portion thereof, to mechanic's liens. If any such lien shall be filed against the Property, Licensed Area, or any portion thereof, and Licensee has caused such lien, Licensee shall cause the lien to be discharged. If such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the Licensee, Licensor, at its option, and at the expense of the Licensee, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) that Licensor deems necessary to defend the Property, Licensed Area, or any portion thereof, from and against such lien.

10. Indemnity. Licensee shall hold harmless and indemnify the Licensor and its employees, agents, contractors, and elected and appointed officials for any and all liability, liens, or other costs and/or losses arising from Licensee's use of the License Area. This indemnity shall include all costs, attorney fees, expenses and liabilities incurred in connection with any such potential claims, the investigation thereof or the defense of any action or proceedings brought thereon, and any judgments, orders, decrees, or liens, resulting therefrom. By requiring this right to indemnification, Licensor in no way waives or intends to waive the limitations on liability that are provided to it under the Colorado Governmental Immunity Act, C.R.S., Sections 24-10-101, *et seq.*, as currently enacted or subsequently amended.

11. Legal Compliance. All of Licensee's actions while using the Licensed Area must be in compliance with applicable federal, state, and local laws and regulations and it shall be Licensee's responsibility to obtain whatever applicable permits, permissions, and/or approvals that are necessary for the uses permitted herein.

12. Enforcement and Restoration. Licensor may exercise immediate reasonable enforcement, restoration and conservation actions when such actions are warranted for the protection and preservation of the Property and Licensed Area. Should an activity be undertaken on the Licensed Area or Property, or any portion thereof, to which the parties have not agreed, Licensor may require Licensee to immediately cease and desist from such activity. In such case, if the unauthorized activity was performed by Licensee, its employees, agents, guests and invitees, the cost of any restoration of the Licensed Area, Property, or any portion thereof, shall be borne by Licensee.

13. Insurance Requirements: The Licensee is allowed to self-insure its liabilities associated under this agreement. Instead of providing a certificate of insurance, Licensee can provide a letter of self-insurance. The Licensee shall provide the letter to the City's Risk Manager at this address:

Risk Manager

City of Fort Collins  
215 N. Mason  
Fort Collins, CO 80524

14. Removal or Relocation of Railroad Signal Equipment. Any rearrangement, relocation, or alteration of the Railroad Signal Equipment shall be according to Article IV(9)(H) of the C&M Agreement, and subject to specifically applicable and lawful Public Utility Commission rules.
15. Notices. Except as otherwise provided herein, any notice provided pursuant to this License shall be in writing and sent to the following addresses, unless a Party gives written notice of a change:

To the Licensor:

City Engineer  
City of Fort Collins  
281 N. College  
Fort Collins, CO 80524

With copies to:

City Attorney  
City of Fort Collins  
300 Laporte Ave., Bldg A  
City of Fort Collins, CO 80521

City Manager  
City of Fort Collins  
300 Laporte Ave., Bldg A  
City of Fort Collins, CO 80521

To the Licensee:

BNSF Railway Company  
Attn: Corporate Real Estate  
2650 Lou Menk Drive, MOB-2  
Fort Worth, TX 76131

With a copy to:

JLL Rail Practice Group  
Attn: Facility Lease Administration  
2650 Lou Menk Drive, MOB-2  
Fort Worth, TX 76131

16. Complete Agreement. The Parties agree that this License embodies the entire understanding and agreement of the Parties with respect to the issues referenced herein, and that this License shall extend to, and be binding upon, the Parties and their respective employees, agents, contractors, heirs, personal representatives, successors and assigns. This License is personal to Licensee and may not be assigned without the Licensor's advance written consent.

17. Governance. This License shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Colorado. The Larimer County District Court shall be the proper venue for all disputes. If the City subsequently agrees in writing that the matter may be heard in federal court, venue will be in US District Court for the District of Colorado in Denver. If any provision of this License is held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this License.

18. Counterparts. This License may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Electronic signatures shall be acceptable to and binding upon all Parties.

19. Meaning of “Licensor.” Where this Agreement requires approval from Licensor or notice to Licensor, it means the City Engineer. Where this Agreement gives Licensor a right, either the City or its agents may invoke that right.

*[Signature page to follow.]*

**IN WITNESS WHEREOF**, the Parties have executed this License as of the day and year first written above.

**LICENSOR:**

THE CITY OF FORT COLLINS

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

**LICENSEE:**

BNSF RAILWAY COMPANY

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

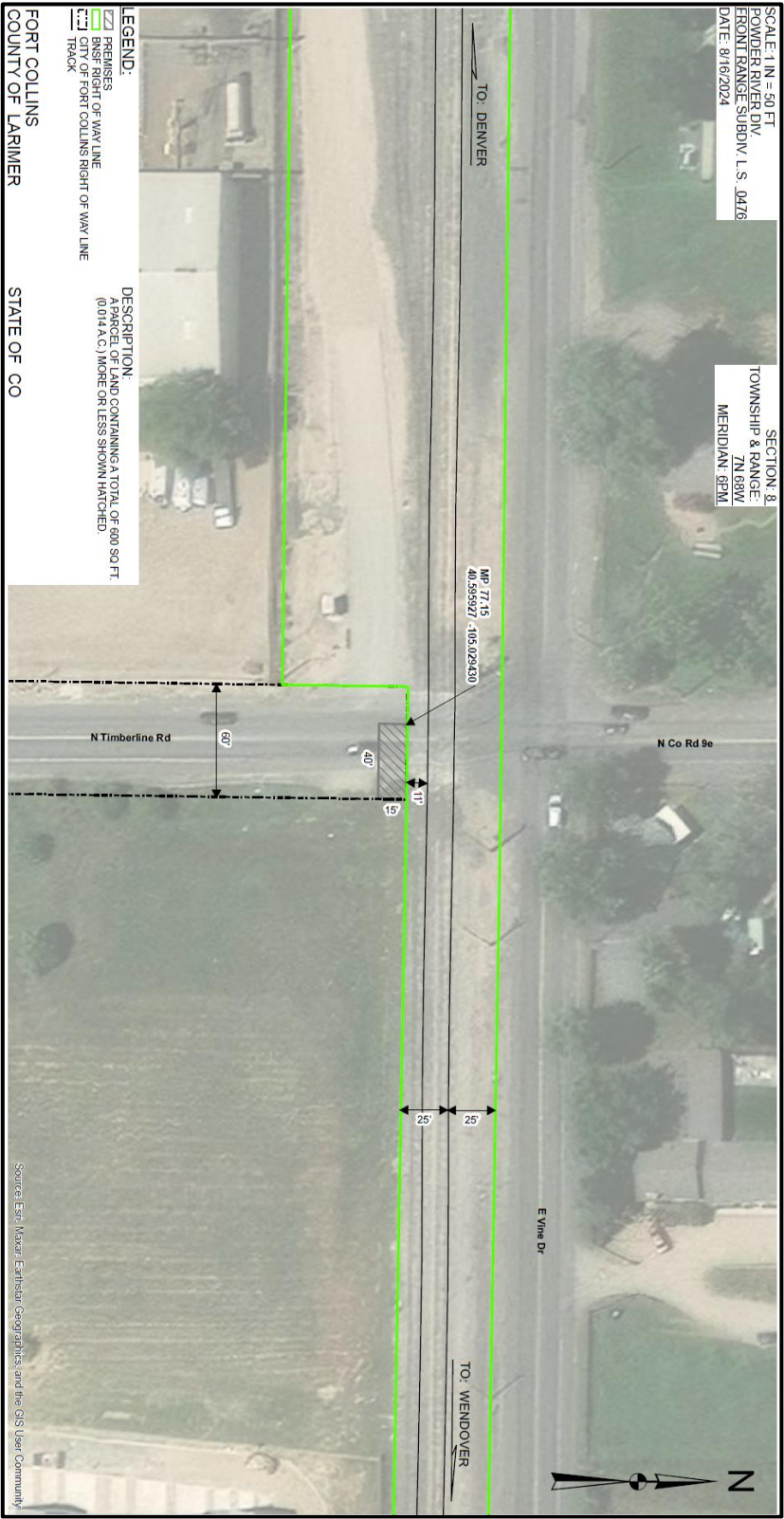
ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

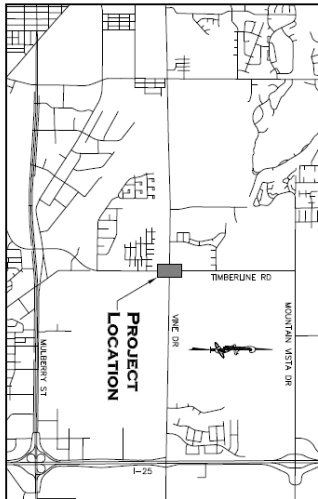
**EXHIBIT A**  
Property and Licensed Area





## MAY 2020

|    |             |            |    |                   |  |
|----|-------------|------------|----|-------------------|--|
| AD | ACCESS      | DIFFERENCE | NH | MANHOLE           |  |
| AE | ACCIDENT    |            | PM | PERMANENT FASHION |  |
| AF | ACCOMMODATE | ANALYZE    | PC | PERIOD OF CLIMATE |  |
| AG | AGENCY      | ANALYSIS   | PC | PERIOD OF CLIMATE |  |
| AH | AGONY       |            | PC | PERIOD OF CLIMATE |  |
| AI | AGONY       |            | PC | PERIOD OF CLIMATE |  |
| AL | ALIVE       |            | PC | PERIOD OF CLIMATE |  |
| AM | AMOUNT      |            | PC | PERIOD OF CLIMATE |  |
| AN | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AO | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AP | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AR | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AS | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AT | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AV | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AW | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AX | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AY | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| AZ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BA | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BB | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BC | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BD | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BE | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BF | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BG | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BH | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BI | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BJ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BK | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BL | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BM | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BN | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BO | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BP | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BQ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BR | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BS | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BT | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BU | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BV | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BW | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BX | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BY | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| BZ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CA | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CB | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CC | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CD | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CE | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CF | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CG | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CH | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CI | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CJ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CK | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CL | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CM | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CN | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CO | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CP | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CQ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CR | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CS | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CT | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CU | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CV | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CW | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CX | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CY | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| CZ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DA | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DB | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DC | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DD | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DE | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DF | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DG | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DH | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DI | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DJ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DK | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DL | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DM | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DN | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DO | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DP | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DQ | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DR | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DS | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |
| DT | ANALYZE     |            | PC | PERIOD OF CLIMATE |  |

[illegible]

### VICINITY MAP

## CITY OF FORT COLLINS BENCHMARK

PROJECT DATUM: NAVD 86  
BENCHMARK #923  
LOCATED ON TIMBERLINE RD. AT LAEMER-WELD BRIGADITION DITCH,  
ON THE SOUTH END OF THE EAST PARAPET WALL.  
ELEVATION=4988.87

## FOR BID PLANS

CALL 2-BUSINESS DAYS IN ADVANCE  
BEFORE YOU DYE, GRAB, OR EXHAUST  
FOR THE MARKING OF UNDERGROUND  
UTILITY.

| <u>INDEX OF SHEETS</u> | <u>DESCRIPTION OF SHEETS</u> | <u>SHEET NO.</u> |
|------------------------|------------------------------|------------------|
|------------------------|------------------------------|------------------|

|    |                                      |
|----|--------------------------------------|
| 1  | COVER SHEET                          |
| 2  | GENERAL NOTES                        |
| 3  | DEMOLITION PLAN - TIMBERLINE         |
| 4  | ROADWAY PLAN - VINCE                 |
| 5  | ROADWAY PLAN & PROFILE - VINCE       |
| 6  | GRADING PLAN - TIMBERLINE            |
| 7  | GRADING PLAN - VINCE                 |
| 8  | SIGNING & STRIPING PLAN - TIMBERLINE |
| 9  | SIGNING & STRIPING PLAN - VINCE      |
| 10 | SIGNAL PLAN                          |
| 11 |                                      |
| 12 |                                      |

**UTILITY CONTACTS:**

**CITY OF FORT COLLINS**  
700 WOOD STREET  
FORT COLLINS, COLORADO 80522

**WALTER SEWELL STORMWATER**  
WHS LAMARQUE  
P.O. 870,415,2418

**LIGHT & POWER**  
LURE DINING  
P.O. 870,415,2724

**TELEPHONE SERVICE**  
CENTRAL LINK  
3702 AUTUMN DR. SUITE 106  
FORT COLLINS, COLORADO 80525

**CABLE TV SERVICE**  
**COMCAST**  
**CONTACT: DON KAPPERMAN**  
**PH. 970.484.7166**

**PREPARED FOR**  
City of  
**Fort Collins**



1218 W. 4th, Suite A  
Vancouver, Canada V6C 2G8  
Phone (604) 674-0355  
Fax (604) 674-0303

**INTEREST CONSULTING GROUP**

## TIMBERLINE AND VINE SIGNAL IMPROVEMENTS

COVER SHEET

|                |
|----------------|
| DATE: 5/19/20  |
| SCALE 00: N/A  |
| SCALE (V): N/A |
| DESIGNED BY: J |
| CHECKED BY: M  |

PROJ. NO. 1320-012-05  
1 OF 12