

**MASTER CROSSING AGREEMENT BETWEEN
THE TOWN OF JOHNSTOWN AND GREAT WESTERN RAILWAY OF COLORADO**

This Master Crossing Agreement (“Agreement”) is made and entered into on this ____ day of December, 2021 (“Effective Date”), by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado (“Town”), and Great Western Railway of Colorado, L.L.C., a Colorado limited liability company (“Great Western”) (collectively, the “Parties”).

RECITALS

1. The Town is a home-rule municipal corporation located in the Counties of Larimer and Weld, State of Colorado.
2. Great Western owns and operates a railroad with railroad tracks that run throughout the municipal boundaries of the Town.
3. The Town is experiencing significant residential and commercial development. In connection therewith, the Town requires the ability to cross a multitude of Great Western’s railroad tracks.
4. To cross the railroad tracks, Great Western requires the execution of a crossing license agreement and payment of a crossing license fee.
5. To expedite the process moving forward, the Town and Great Western desire to set forth the terms and conditions of the crossing license agreements for twenty (20) crossings in the Town. The Town further desires to prepay, and Great Western desires to accept prepayment of, the crossing license fees and all expenses, except the application fees as described herein, for the twenty (20) crossings.
6. To memorialize the foregoing, the Town and Great Western desire to enter into this Agreement.
7. The Town finds that this Agreement is in the best interests of the citizens of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Great Western agrees as follows:

1. Recitals. The Recitals are incorporated as if set forth fully herein.
2. Scope of Agreement. This Agreement shall apply to twenty (20) railroad crossings in, or in close proximity to, the boundaries of the Town (“Subject Crossings”). The Subject

Crossings shall be underground crossings, except that one (1) of the Subject Crossings shall be a pedestrian crossing. The pedestrian crossing is the crossing that has been approved by Great Western and is located at latitude 40.32729, longitude -104.90025, located at Mile Post 17.44, in the Town, County of Weld State of Colorado (“Pedestrian Crossing”).

3. Size of the Pipelines. The pipeline casings for the Subject Crossings shall not exceed 36” in diameter in total, except that one pipeline casing for a raw water line may be up to 56” in diameter and one pipeline casing for a sewer line may be up to 42” in diameter. The meaning of a “Subject Crossing” shall be construed to include all pipelines that are part of the scope of the project then being constructed on the condition that the pipelines are installed as part of the same project scope, are in the same trench or immediately adjacent trenches, and the casings do not collectively exceed 36” in diameter; provided, however, that in the event more than one pipe is proposed in a crossing, engineering drawings and calculations must be submitted and approved by Great Western, such approval not to be unreasonably withheld or delayed, and if such engineering review finds it acceptable, the such combine total casing diameter may go up to 48”. For the avoidance of doubt, the Town may install, by boring under the railroad tracks, two pipelines as part of the same project, appropriately distanced in compliance with the law and Great Western’s engineering standards, and such improvements shall only be considered to be one (1) of the Subject Crossings subject to only one (1) Crossing License Fee, defined below.

4. Crossing License Agreements. For each of the Subject Crossings, the Town and Great Western agree to utilize the form, or have developers utilize the form, of crossing license in substantially the same form as attached hereto and incorporated herein by reference as Exhibit A.

5. Crossing License Fees. For each of the Subject Crossings, the Town agrees to pay a one-time crossing license fee in the amount of Twenty-Five Thousand Dollars (\$25,000.00) (“Crossing License Fee”). The Town agrees to pre-pay to Great Western, the Crossing License Fees for the Subject Crossings on or before December 31, 2021, in the amount of Five Hundred Thousand Dollars (\$500,000.00). Except for the Application Fee, defined below, the Crossing License Fee shall include any and all fees, of whatever nature and however characterized (right of way fees, permit fees, license fees, engineering fees, etc.), that Great Western may impose, at any time, to cross that particular section of the railroad tracks.

6. Application Fee. In addition to the Crossing License Fee, Great Western may impose an Application Fee payable with an application to cross each of the Subject Crossings. For five (5) years from the Effective Date of this Agreement, the Application Fee shall not exceed Three Thousand Five Hundred Dollars (\$3,500.00). After such five (5) year period, the Application Fee for the remaining Subject Crossings may be adjusted based on the fees Great Western charges others crossing its railroad; provided such fee shall not exceed the average fee Great Western charges all other parties that cross its railroad. Upon submission of a complete application, Great Western shall complete its review of the application and provide a response within thirty (30) days. The Parties recognize and agree that the Application Fee for the Pedestrian Crossing has been paid and the Application Fees for two water lines and one sanitary sewer line in the Johnstown Farms, Filing No. 3, development have also been paid.

7. Developer Third Party Beneficiaries. Great Western's commitments and obligations contained herein shall apply to the Town and to developers constructing improvements at the Subject Crossings that are thereafter dedicated to the Town.

8. Assignment. Great Western may not assign any part of its rights, duties or obligations under this Agreement without the prior written consent of the Town, which consent shall not be unreasonably withheld.

9. Binding Effect. The benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors, assigns and transferees of the Parties.

10. Notices. All notices, consents or other instruments provided for under this Agreement shall be deemed properly given when: (1) hand-delivered; (2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (3) sent by electronic mail return receipt requested and received. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO GREAT WESTERN:
Great Western Railway of Colorado, LLC
Attention: Director, Real Estate
225 Clayton Street, 4th Floor
Denver, CO 80206
Email: nbrown@omnitrax.com

TO TOWN:
Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

COPY TO:
Attention: General Counsel
252 Clayton Street, 4th Floor
Denver, CO 80206
Email: jspiegelman@omnitrax.com

COPY TO:
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

11. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in the City and County of Denver or the County of Weld, State of Colorado.

12. Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, this Agreement shall become null and void in its entirety and the Great Western shall provide a proportional reimbursement of the prepaid Crossing License Fees to the Town. For illustrative purposes, if the Agreement, or a portion thereof, is deemed unlawful or unenforceable after improvements have been installed at ten (10) of the Subject Crossings, the Town shall be entitled to reimbursement in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00).

13. Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting Party. Failure on the part of any Party to complain of any act or failure to act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

14. Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the prevailing party, to the extent permitted by law, considering the financial expenditure limitations imposed by Colorado law upon governmental entities, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

15. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

16. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the Parties.

17. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

[Signatures on the following pages.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF JOHNSTOWN, COLORADO

By: _____
Gary Lebsack, Mayor

Attest:

Diana Seele, Town Clerk

GREAT WESTERN RAILWAY OF
COLORADO, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A
FORM OF CROSSING LICENSE