TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 59, SERIES 2017

A RESOLUTION RATIFYING THE RAILROAD CROSSING RENEWAL AGREEMENT WITH GWRR FOR THE MAIN STREET CROSSING

WHEREAS, the Town Council of the Town of Timnath (“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 Renewal Agreement with Great Western Railroad for the Main Street Crossing; and

WHEREAS, the Town has included this project in its Capital Improvement Projects and desires to take the opportunity to do this work in conjunction with work by the railroad; and

WHEREAS, the Town Council is familiar with the Project and finds it to be in the best interest of the Town, its residents, and the general public to proceed with construction;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval
The required agreements and expenditure of funds up to $63,000 is hereby ratified for the Main Street railroad crossing upgrade. The required agreements may be finalized the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants.


TOWN OF TIMNATH, COLORADO

Jill Grossman-Belisle, Mayor

ATTEST:

Milissa Peters, CMC
Town Clerk
EXHIBIT A
Renewal Agreement
RAILROAD CROSSING RENEWAL AGREEMENT

THIS RAILROAD CROSSING RENEWAL AGREEMENT ("Agreement") is made and entered into this 16th day of October, 2017, 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 and the Town have determined to improve the grade crossings over the track of GWR at Main Street (County Road 5), U.S. DOT Crossing number 244878F, located at Milepost 81.25 of GWR's Greeley Subdivision, as depicted on the attached Exhibit A-1 which is incorporated into this Agreement by this reference (collectively, the "Main Street Crossing"); and

WHEREAS, the Town has determined to fund the cost of materials for the GWR to improve the Main Street Crossing; and

WHEREAS, the GWR has determined to fund the cost of labor and equipment to improve the Main Street Crossing; and

WHEREAS, the Town and GWR desire to enter into this Agreement to provide for terms and conditions under which the Town will provide such funding; 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 work ("Work") as outlined in the attached Exhibit A-2 which is incorporated into this Agreement by this reference. This Work generally consists of removing the existing rail, cross ties and other track materials (collectively the "Materials"), and the grading and replacement of the Materials. GWR agrees to begin the Work of improving the Main Street Crossing within thirty (30) days after ordering and receiving the Materials specified on Exhibit A-2. Provided GWR receives payment from the Town within the time frame specified in Section 2 of this Agreement, GWR agrees to complete the Work as soon as reasonably possible, but in no event later than October 31, 2017.

2. **Payment.** The Town will make payments to GWR in accordance with the estimated costs of Materials ($59,385) as outlined in Exhibit A-2 and the following provisions:
   - GWR will submit invoices for the costs incurred. If the final costs exceed those described in Exhibit A-2, 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 Main Street Crossing renewal Work.
• GWR may use Materials from inventory (rail, ties, plates, spikes, ballast) to expedite the track renewal Work.
• GWR agrees to order the track Materials needed to renew the road crossing within fifteen (15) days from the date that this Agreement is executed.

3. **Maintenance Obligations.** After re-construction of the Main Street 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(c), the Town acknowledges that it shall be obligated to maintain, repair, and replace, at no cost to GWR, the roadway approaches to the Main Street 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(a), GWR acknowledges that it shall be obligated to maintain, repair, and replace, at no cost to the Town, the Main Street Crossing from the outside end of one tie to the outside end of the opposite tie of each, together with all appurtenances thereto including, but not limited to, operating facilities, warning devices, flashing light signals, gates, crossbucks, and signage if any such appurtenances are installed by GWR.

4. **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.

5. **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 6. If the Town ceases to provide funds for its obligations contained in Section 3 A or terminates the Agreement pursuant to Section 6, then this Agreement shall be null and void.

6. **Termination.** This Agreement shall take effect as of September 28, 2017 and shall remain in effect until the completion of the 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 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 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 Work. Within thirty (30) days after completion of the 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.
7. Independent Contractor. In performing the 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 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.

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

9. 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.

10. 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 10, 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  
4800 Goodman Street  
Timnath, CO 80547  
Fax: (970) 224-3217

If to GWR:  
Great Western Railway of Colorado, L.L.C.  
ATTN: Hubert Gassner, Manager  
252 Clayton St., #4  
Denver, CO 80206  
Fax: (866) 759-3245
With copies to: Great Western Railway of Colorado, L.L.C.
ATTN: Ken Rose, Director of Engineering & Environmental
252 Clayton St., #2
Denver, CO 80206
Fax: (866) 759-3245

11. 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.

12. 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.

13. Extension or Modification. Any amendments or modifications to this agreement
     shall be in writing signed by both parties.

14. Indemnity. GWR shall indemnify and hold harmless Town, its officers, agents
     and employees from and against injury, loss damage, liability, suits, actions or claims of any type
     or character arising out of the work done in fulfillment of the terms of the Contract or on account
     of any act, claim or amount arising or recovered under workers’ compensation law or arising out
     of the failure of GWR to conform to any statues, ordinances, regulation, law or court decree.
     GWR shall be fully responsible and liable for any and all injuries or damage received or
     sustained by any person, persons, or property on account of its performance under this
     Agreement of its failure to comply with the provisions of the Agreement, or on account of or in
     consequence of neglect of GWR in its construction methods or procedures: or in provisions
     of the materials required herein, or from any claims or amounts arising or recovered under the
     Workers’ Compensation Act, or any other law, ordinance, order, or decree. This paragraph shall
     survive expiration of termination hereof.

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

TOWN: 

TOWN OF TIMNATH, COLORADO

By: April Getchius, Town Manager

ATTEST:

Melissa Peters
STATE OF COLORADO  
COUNTY OF ___

The foregoing Railroad Crossing Renewal Agreement was acknowledged before me this ___ day of October, 2017, by Hubert Gassner, Manager of Great Western Railway of Colorado, L.L.C., a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: ___

Notary Public

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GREAT WESTERN RAILWAY OF COLORADO, L.L.C., a Colorado limited liability company

By: Hubert Gassner, Manager

DENVER ) ss.

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SANDRA REMY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084004056
MY COMMISSION EXPIRES FEBRUARY 6, 2020
Great Western Railway of Colorado

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**Total Internal Labor**

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**Total Material** 49,385

**Contract Services**

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**Total Contract Services** 10,000

**Other Capital**

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**Total Other Capital**

**Taxes**

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<tr>
<td>USD</td>
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**Total Taxes**

**Total CR 5/ Timnath Crossing Rehabilitation Cost** 59,385