

RESOLUTION NO. 2889

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROVISION OF PRELIMINARY ENGINEERING SERVICES IN CONNECTION WITH GRADE CROSSING IMPROVEMENTS WITH PORTLAND & WESTERN RAILROAD FOR PHASE II – PRELIMINARY ENGINEERING AND CONSTRUCTION ENGINEERING INSPECTION SERVICES FOR THE 5TH STREET RAILROAD CROSSING WORK ASSOCIATED WITH THE 5TH STREET / KINSMAN ROAD EXTENSION PROJECT.

WHEREAS, the City has planned and budgeted for completion of Capital Improvements Projects #1139, 2099, and 4196, known as 5th Street / Kinsman Road Extension project (the Project); and

WHEREAS, the extension of 5th Street and Kinsman Road as part of the Project necessitate safety and regulatory improvement of the 5th Street railroad crossing; and

WHEREAS, the 5th Street railroad crossing is under the jurisdiction of Portland & Western Railroad (Railroad) and subject to Railroad design and construction requirements; and

WHEREAS, the City entered into an Agreement for Provision of Preliminary Engineering Services in Connection with Grade Crossing Improvements (Agreement) with Portland & Western Railroad for Phase 1 – Preliminary Engineering of the 5th Street railroad crossing as part of the Project; and

WHEREAS, the Railroad performed and completed Phase 1 services to the satisfaction of the City.

WHEREAS, the City desires to enter into an Agreement with the Railroad to perform Phase II – Preliminary Engineering and Construction Engineering Inspection services for the 5th Street railroad crossing as part of the Project; and

WHEREAS, completion of the Phase II services will allow for coordinated construction between the Project and the 5th Street railroad crossing.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into and execute, on behalf of the City of Wilsonville, an Agreement for Provision of Preliminary Engineering Services in Connection with Grade Crossing Improvements with Portland & Western Railroad for a not to exceed amount of \$146,342.00, which is substantially similar to **Exhibit A** attached hereto.

Section 2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 15th day of March 2021, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Julie Fitzgerald
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Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:
Kimberly Veliz
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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Lehan	Yes
Councilor West	Excused
Councilor Linville	Yes

EXHIBIT:

A. Agreement for Provision of Preliminary Engineering Services in Connection with Grade Crossing Improvements.

EXHIBIT A

**AGREEMENT FOR PROVISION OF PRELIMINARY ENGINEERING SERVICES
IN CONNECTION WITH GRADE CROSSING IMPROVEMENTS**

This Agreement between **PORTLAND & WESTERN RAILROAD, INC.**, a New York corporation (hereinafter "**Railway**"), and the **CITY OF WILSONVILLE**, a political division of the State of Oregon (hereinafter "**Roadway Authority**"), made this ____ day of _____ 2021, (hereinafter "**Effective Date**"), is intended to cover preliminary engineering services in connection with alteration of the 5th Street Crossing (hereinafter "**Crossing**") of the Railway's tracks near Railway's station of Wilsonville, Oregon Electric District near Wilsonville, Oregon.

WHEREAS, the **RAILWAY** owns the track and operates the corridor via a Rail Service Easement, dated November 25, 1997 between Burlington Northern & Santa Fe Railway Company and Portland & Western Railroad, Inc. and the Oregon Department of Transportation, successor in land ownership to Burlington Northern & Santa Fe Railway Company, hereinafter called "**ODOT**", owns the land situated at or near the City of Wilsonville, Clackamas County, State of Oregon, at Mile Post 39.20, Oregon Electric District, and **RAILWAY** has the prior and superior right to possess and to operate over the Premises; and

WHEREAS, in the interest of public safety and aiding motor vehicle traffic, **Roadway Authority** wishes to expand the Crossing, specifically referred to as **RAILWAY's DOT#058317F, 5th Street, M.P. 42.97, Oregon Electric District, Railroad Project # 17PWRR___R**, hereinafter called "**Project**", located in the City of Wilsonville, Clackamas County, State of Oregon; and

WHEREAS, the **Roadway Authority** is willing to undertake the entire cost and expense of preliminary engineering of the Project with **Roadway Authority** funds available for this purpose and the **Railway** is willing to consent to and assist with the work related to the implementation of the Project upon the terms and conditions herein stated and not otherwise; and

WHEREAS, **Roadway Authority** is developing plans for obtaining approval for the expansion of the Crossing and to obtain an Oregon Department of Transportation (ODOT) Order under ODOT's rules and regulations; and

WHEREAS, the Crossing and adjacent roadway configuration has been defined by a Conceptual Design prepared by Otak, Inc. in October 2016; and

WHEREAS, the **Roadway Authority** and **Railway** acknowledge that as of the effective date of this agreement, the ODOT Order approving the expansion of the existing Crossing and **Railway** preliminary engineering plans for the expansion of the Crossing are not yet issued or final and the parties agree to cooperate and collaborate in the preparation of the preliminary engineering to further define the Crossing and roadway configurations, to prepare the application for the ODOT Order and prepare the **Railway** preliminary engineering plans with attached Exhibit A defining the Railway engineering costs;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

1. DEFINITIONS

Terms used in this Agreement have the meanings indicated below which are applicable to both the singular and plural thereof.

- 1.1 **Preliminary Engineering Services.** All engineering performed by the **Railway** and/or its consultants, prior to commencement of construction engineering, including but not limited to preparation of construction plans, specifications and cost estimates (hereinafter "**Preliminary**

Engineering Plans) and to assist with the preparation of the ODOT Order Application and the FRA Quiet Zone Application.

- 1.2 **Railway's Contractor.** A contractor selected by **Railway** to perform part or all of the alteration or construction of the Crossing covered by this Agreement.
- 1.3 **Exhibit A.** The attached document defines the cost to provide the **Preliminary Engineering Services** and to develop the **Railway's** final Preliminary Engineering Plans, as defined in the ODOT Order (if not materially different from the ODOT Order Application).
- 1.5 **Railway's Consulting Engineer.** The consulting engineer selected by **Railway** to perform part or all of **Preliminary Engineering Services** in conjunction with the alteration or construction of the Crossing.

2. SERVICES

- 2.1 **Basic Services.** **Railway** and/or **Railway's Consulting Engineer** will proceed, together with **Roadway Authority**, to expeditiously develop the ODOT Order Application and FRA Quiet Zone Application. Upon issuance of the ODOT Order, **Railway** and/or **Railway's Consulting Engineer** shall commence to prepare the **Preliminary Engineering Plans** in accordance with the ODOT Order. The foregoing described scope of work is hereinafter referred to as the "**Basic Services**". **Roadway Authority** shall reimburse **Railway** for all costs and expenses it incurs in connection with the Basic Services.
- 2.3 **Additional Services.** If authorized in writing by **Roadway Authority**, **Railway** may furnish or obtain services that are not included as part of the **Basic Services**, except to the extent otherwise provided in Exhibit A (hereinafter "Additional Services"). Payment for Additional Services shall be as set forth in a supplement to this Agreement.

3. PAYMENT

Railway will endeavor to invoice **Roadway Authority** monthly for services performed under this Agreement. **Roadway Authority** agrees to accept the invoice or reject the invoice if it does not comply with this Agreement and return it to **Railway** within 10 days of receipt. **Roadway Authority** agrees to pay all invoices not rejected by it in writing within 30 days of receipt.

4. TERM AND TERMINATION

The term of this Agreement shall commence on the Effective Date and continue until December 31, 2018. **Roadway Authority** may terminate this Agreement at its convenience, upon written notice, effective upon delivery. In such event, **Railway** will be entitled to compensation for the services performed or costs accrued up to the date of termination. **Railway** may terminate this Agreement for any breach hereof by **Roadway Authority**.

5. DESIGN REVIEW

- 5.1 After **Railway** has submitted a complete set of Preliminary Engineering Plans including specifications and cost estimates to **Roadway Authority**, **Roadway Authority** will have two weeks to review and provide its approval or comments to **Railway**. **Railway** agrees to consider and incorporate where practical **Roadway Authority** comments which do not significantly impact project cost or schedule. Upon approval, it is anticipated that **Railway** will prepare final construction contract documents for **Roadway Authority** review and execution, after which bidding and, in turn, construction will commence.
- 5.2 BY ITS REVIEW, APPROVAL OR PREPARATION OF THE **PRELIMINARY ENGINEERING PLANS**, ODOT ORDER OR OTHER DOCUMENTS PREPARED PURSUANT TO THIS AGREEMENT (COLLECTIVELY, THE "**DOCUMENTS**"), **RAILWAY** SIGNIFIES ONLY THAT THE **DOCUMENTS**

AND THE PROJECT PROPOSED TO BE CONSTRUCTED IN ACCORDANCE WITH THE **DOCUMENTS** SATISFY **RAILWAY'S** REQUIREMENTS. **RAILWAY** EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THE **DOCUMENTS**, INCLUDING, BUT NOT LIMITED TO, THE INTEGRITY, SUITABILITY OR FITNESS FOR THE PURPOSES OF **ROADWAY AUTHORITY** OR OTHER PERSONS OF SUCH **DOCUMENTS** OR THE PROJECT CONSTRUCTED IN ACCORDANCE WITH THE **DOCUMENTS**.

6. MISCELLANEOUS PROVISIONS

- 6.1 If any of the work described in Exhibit A shall have been performed prior to execution of this Agreement by any party hereto, then in such event this Agreement shall take effect as of the date such work actually commenced.
- 6.2 This Agreement and any authorized supplements shall constitute the entire agreement between the parties and supersedes any prior agreements and conditions. This Agreement can be modified and supplemented only by written instrument signed by both parties.
- 6.3 If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
- 6.4 In no event shall either party be liable for any indirect, special, consequential or punitive damages.
- 6.5 This Agreement shall be governed by the laws of the State of Oregon, exclusive of its choice of law rules.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective the day and year first set forth above.

PORTLAND & WESTERN RAILROAD, INC.

CITY OF WILSONVILLE

By: _____

By: _____

[PRINTED NAME]

[PRINTED NAME]

[TITLE]

[TITLE]

Exhibit A – Cost Estimate



Estimate No.: 058317F - 3/3/21

PORTLAND AND WESTERN RAILROAD (PNWR)

WILSONVILLE (CLACKAMAS), OREGON - 5th Street

DOT#: 058317F
RR MP.: 42.97(WESTERN) Region
SubdivisionRAILROAD #: 17PWRR43R
XORAIL#: 105476

Summary

CROSSING WARNING SYSTEM (Includes all design, requisition, labor, materials, shop wiring, and installation)	TBD
CROSSING SURFACE/RESURFACE (Includes all design, requisition, labor, materials, and installation)	TBD
TRACK GRADE AND REHABILITATION (Includes all design, requisition, labor, materials, and installation)	In Surface
PRELIMINARY ENGINEERING (Phase 1) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$0.00
AGREEMENTS & APPROVALS (Phase 2) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$6,263.00
CONSTRUCTION ENGINEERING (Phase 3) (Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)	\$5,089.00
CROSSING CONTROL CIRCUIT DESIGN (Phase 1)	\$74,000.00
CIVIL / STRUCTURAL ENGINEERING (Phase 1) (Includes Costs For Services Provided by Wisser Rail Engineering)	\$0.00
CONSTRUCTION ENGINEERING INSPECTION (Includes Costs For Services Provided by Wisser Rail Engineering)	\$32,000.00
PRELIMINARY ENGINEERING (Phase 2)	\$24,000.00
CIVIL / STRUCTURAL ENGINEERING (Phase 2) (Includes Costs For Services Provided by Wisser Rail Engineering)	\$0.00
RIGHT OF ENTRY FEE (Right of Entry Fee of \$1,500 is valid for 60 days, after 60 days, additional fees of \$750 per 30 days are required.)	\$0.00
FLAGGING SERVICES (Estimated Flagging Services cost based on 0 days @ \$1050 per day)	\$0.00
AC POWER SERVICE (Includes all Power Service Charges not included in other costs)	\$0.00
OTHER: PNWR Office Engineering (\$1500) and 15% contingency (tbd)	\$5,000.00
TOTAL ESTIMATE COST	\$146,342.00

DATE: 3/3/21

RESPONSIBLE PARTY:

Name: City of Wilsonville

Number: 0

Contact: Bryan Cosgrove

NOTE: This Estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower, resource availability, and other factors known as of the date prepared. The actual cost for Railroad work may differ based upon the agency's requirements, their contractors work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work. If any extended time elapses from the date of this Estimate, the Railroad will reserve the right to update the estimate to current price values, and require agency's approval before any work by Railroad will commence.

