

RESOLUTION NO. 3006

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AND FUNDING AGREEMENT WITH PORTLAND & WESTERN RAILROAD, INC. FOR RE-CONSTRUCTION OF A GRADE CROSSING AT THE 5TH STREET RAILROAD CROSSING ASSOCIATED WITH THE 5TH STREET / KINSMAN ROAD EXTENSION PROJECT.

WHEREAS, the City has planned and budgeted for completion of Capital Improvement Projects #139, 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 with Portland & Western Railroad for preliminary engineering and construction inspection services for the 5th Street railroad crossing as part of the Project; and

WHEREAS, the preliminary engineering work is complete and the City desires to enter into a Construction and Funding Agreement with the Railroad to construct the 5th Street railroad crossing as part of the Project; and

WHEREAS, construction of the 5th Street railroad crossing will allow for timely completion of the Project.

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, a Construction and Funding Agreement with Portland & Western Railroad, Inc. for an amount of \$1,571,757.75, which is substantially similar to **Exhibit A** attached hereto.

Section 2. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 17th day of October, 2022, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Kristin Akervall
3CFF015570AB425...

Kristin Akervall, Council President

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

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

EXHIBIT:

- A. Portland & Western Railroad, Inc. Construction and Funding Agreement



EXHIBIT A

RE Contract: _____
P&W RR Project#: 17PWR43R

**PORTLAND & WESTERN RAILROAD, INC.
CONSTRUCTION AND FUNDING AGREEMENT
RE-CONSTRUCTION OF GRADE CROSSING**

MILEPOST 42.97
CITY OF WILSONVILLE, COUNTY OF CLACKAMAS, STATE OF OREGON

THIS AGREEMENT made this _____ day of _____, 2022, by and between the **CITY OF WILSONVILLE**, hereinafter called "**Roadway Authority**", and **PORTLAND & WESTERN RAILROAD, INC.**, a New York corporation, hereinafter called "**Railway**":

WITNESSETH:

WHEREAS, in the interest of public safety and aiding motor vehicle traffic, **Roadway Authority** wishes to reconstruct an existing public crossing, specifically referred to as **RAILWAY's Milepost 42.97, OE District, with DOT# 058317F, Railroad Project # 17PWR43R** hereinafter called "**Project**"; located in the City of Wilsonville, County of Clackamas, State of Oregon, with **Exhibit "A"** attached hereto being a Project Print that shows the type, size and location of the new at-grade crossing structure; and

WHEREAS, the **Roadway Authority** is willing to undertake the entire cost and expense of construction of the Project with City 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, the State of Oregon, working through its Department of Transportation, Railroad Division (ODOT), has reviewed the public safety, necessity, convenience and general welfare of the crossing and will issue an ODOT Order authorizing the reconstruction of the crossing and defining the respective responsibilities of the Roadway Agency and Railway in constructing the crossing;

WHEREAS, said **Project** shall be constructed in accordance with plans and designs which shall be subject to the mutual approval of **Railway** and **Roadway Authority**, and

WHEREAS, the **Railway** and **Roadway Authority** hereto desire to contract with reference to the work to be done by each of those in connection therewith, the manner of the work to be performed, and the payment of costs and expense therein involved.

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



I. Performance of Work

The **Roadway Authority** and **Railway** will each perform various items of work as described below:

A. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY EITHER **ROADWAY AUTHORITY** OR ITS CONTRACTOR AT **ROADWAY AUTHORITY** EXPENSE

1. Project Plans & Specifications and Construction
 Except as otherwise herein provided, furnish all plans, engineering, supervision, labor, material, supplies and equipment necessary for construction of the Project. **Roadway Authority** shall obtain written approval of Project Plans & Specifications from **Railway** prior to construction of the Project.
2. Roadway Construction
 Bear responsibility for the construction of the highway roadbed outside of the **Railway** ties and the roadway up to the edge of the railroad crossing surface to include but not limited to all pavement structure, pavement surface, shoulders, drainage, sidewalks, pavement striping, advance pavement markings, erosion control, tree cutting, mowing, and advance warning signs.
3. Subgrade Utility Construction
 Bear responsibility for (i) ensuring that each utility line is installed in accordance with a written agreement with **Railway** and (ii) the construction of the new utility lines under the track for **Roadway Authority** use to be installed as part of this project. All Subgrade Utility Crossings under tracks will be installed in accordance with **Railway** requirements and specifications.
4. Maintenance of Traffic
 Bear responsibility for all traffic detours, maintenance of traffic, and all other roadway modifications, permanent or temporary, necessary for **Railway** to complete crossing construction, including warning device installations, ditching, track raise, etc., in addition to doing the same for the adjacent streets and private crossing closures as required by the ODOT Order.
5. Schedule & Notification
 Provide project construction schedule and notify **Railway** sixty (60) days prior to date **Railway** is to perform work and/or provide flagging services.

B. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY THE **RAILWAY** AT **ROADWAY AUTHORITY** EXPENSE

1. Engineering and Bill Preparation
 Perform preliminary and special engineering, review, and inspection services, including field and office work and preparation of bills.
2. Construction

SIGNAL WORK

The **Railway**, at the **Roadway Authority's** expense, will install track circuitry, 2 new LED flashing-light signals, 2 new LED signaled automatic gates, and related crossing safety equipment to accommodate the **Roadway Authority's** construction plans previously provided to the **Railway** and in accordance with the ODOT Order, Section 3 and the



attached drawings No. R4, dated June 7, 2022 (or the latest revision) attached as **Exhibit "A"** with projected cost estimates for construction described in **Exhibit "B"**.

CROSSING SURFACE/ RESURFACE WORK

The **Railway**, at the **Roadway Authority's** expense, will install 81.25 track feet of new concrete crossing surface at the crossing site in accordance with the ODOT Order, Section 3 and the attached drawing No. R4, dated June 7, 2022 (or the latest revision) attached as **Exhibit "A"** with projected cost estimates for construction described in **Exhibit "B"**.

The estimate provided in **Exhibit "B"** is not intended to be a guarantee of construction costs and actual construction cost may differ based upon variables encountered at and during construction.

For the **Project**, the work will commence following the issuance of a Notice to Proceed from the **Roadway Authority** to **Railway**.

3. Flagging

Perform flagging and furnish requested services and devices during construction operations of the **Roadway Authority** or its contractor, as deemed necessary by the **Railway**. **Any flagging cost or protective services performed by the Railway or its contractor shall be at the Roadway Authority's expense.**

III. Traffic Protection and Safety

All work herein provided for, to be done by the **Roadway Authority** or its contractors on the **Railway's** right-of-way, shall be performed by the **Roadway Authority** or its contractors in a manner satisfactory to the **Railway** and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the **Railway**. The **Roadway Authority** or its contractors shall enter into a "Right-of-Entry Agreement" with **Railway**, and provide **Railway** a copy of the actual signed agreement prior to the first entry onto **Railway's** right-of-way. The **Roadway Authority** shall reimburse the **Railway** for all actual costs thereof, including, without limitation, both direct and indirect labor additives. The **Railway** will submit bills for flagging and other protective services and devices currently during the progress of the work contemplated by this Agreement. The **Railway** shall have one hundred twenty (120) days to submit complete billing for flagging and other protective services and devices, and the **Roadway Authority** shall pay such bills within thirty (30) days of its receipt of billing. Wherever the safeguarding of trains or traffic of the **Railway** is mentioned in this Agreement, it is intended to cover and include all users of the **Railway's** tracks having permission for such use.

IV. Compensation

Not used.

V. Conditions, Restrictions, and Limitations

All the aforementioned rights are granted subject to the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions contained in this Agreement; and **Roadway Authority**, in the exercise of the rights and in the conduct of the **Project**, shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions.

The **Roadway Authority** shall ensure that its contractor(s) obtain and provide to **Railway** evidence that such contractor(s) have procured the insurance coverage described in **Exhibit "C"** attached to the Right of Entry



RE Contract: _____
P&W RR Project#: 17PWR43R

Agreement, hereinafter called "Insurance Requirements", covering their work on **Railway's** property covering this **Project**. The parties acknowledge and agree that the term "Railroad" in the Insurance Requirements shall mean **Railway**, including as named and additional insured, as specified therein, and copies of all insurance correspondence, binders, policies, certificates and endorsements shall be sent to PORTLAND & WESTERN RAILROAD, INC. (PNWR); Attn.: Property Management Dept., 1855 W. Baseline Rd. Suite 200, Mesa AZ 85202.

VI. Compliance with Federal Regulations

If the **Railway** enters into a contract or agreement with a contractor to perform any of the work, which the **Railway** is required to perform under the terms of this Agreement, the **Railway**, for itself, its assigns and successors in interest, agrees that it will not unlawfully discriminate in its choice of contractors.

VII. Signatory Warranty

Each party to this Agreement certifies that its signatory has the authority to enter into this agreement on behalf of its respective organization.

VIII. Term and Maintenance Responsibilities

The term of this Agreement commences on the date on the top of page one hereof and shall continue for a period not to exceed the earlier of the 12 months from the date construction commences within the **Railway's** Right-of-Way or completion of the construction of the **Project** as determined by the **Railway**.

Maintenance responsibilities are as defined in the ODOT Order Number 51375.

IX. Assignment

Neither party has the right to assign this Agreement without the consent of the other.

X. Termination [Intentionally omitted.]

XI. Construction

The **Roadway Authority** shall complete all construction within one (1) year of the execution date of this agreement. If construction has not commenced within one (1) year, this agreement becomes null and void. If construction has commenced and is not complete, the **Roadway Authority** shall provide the **Railway** a time line for the completion of the construction. The **Railway** will review the time line and determine if amendments to the terms of this Agreement or supplemental agreements are required prior to the completion of construction.



RE Contract: _____
P&W RR Project#: 17PWR43R

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinafter written.

WITNESS:

**City of Wilsonville
AGENCY**

**By: _____
Bryan Cosgrove, City Manager**

WITNESS:

**Portland & Western Railroad, Inc., a New York
corporation**

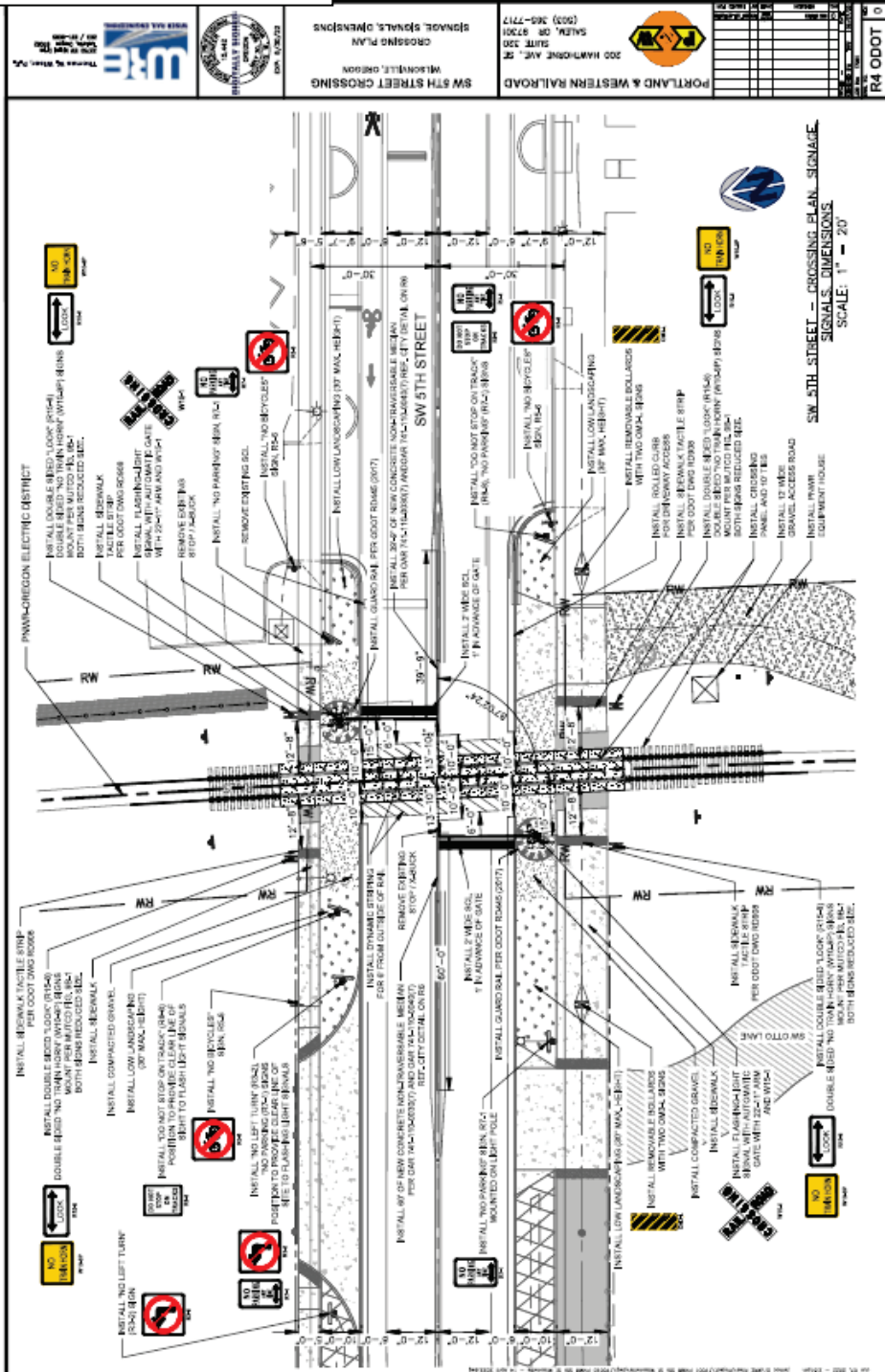
Authorized Representative Signature

Authorized Representative Name (print) / Title



RE Contract: _____
P&W RR Project#: 17PWR43R

Exhibit "A"
RR PROJECT # 17PWR43R
At-Grade Crossing Construction
MP 42.97
WILSONVILLE, OREGON
Print date: 06/07/2022





RE Contract: _____
 P&W RR Project#: 17PWR43R

Exhibit "B"
RR PROJECT # 17PWR43R
 Preliminary Cost Estimate for Total
 Railroad costs of Construction of
 PROJECT to Roadway Authority



Estimate No.: 058317F - 9/26/22

PORTLAND AND WESTERN RAILROAD (PNWR)
 WILSONVILLE (CLACKAMAS), OREGON - 5th STREET

DOT#: 058317F
 RR MP.: 3E-42.87

(WESTERN) Region
 OE Subdivision

RAILROAD #: 17PWRR43R
 XORAIL#: 106478

Summary

CROSSING WARNING SYSTEM	\$406,000.00
<small>(Includes all design, requisition, labor, materials, shop wiring, and installation)</small>	
CROSSING SURFACE/RESURFACE	\$821,389.00
<small>(Includes all design, requisition, labor, materials, and installation)</small>	
TRACK GRADE AND REHABILITATION	In Surface
<small>(Includes all design, requisition, labor, materials, and installation)</small>	
PRELIMINARY ENGINEERING (Phase 1)	\$3,887.00
<small>(Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)</small>	
AGREEMENTS & APPROVALS (Phase 2)	\$2,147.00
<small>(Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)</small>	
CONSTRUCTION ENGINEERING (Phase 3)	\$25,486.00
<small>(Includes CONTRACT Labor for all Engineering, Agency Coordination, and Project Management)</small>	
CROSSING CONTROL CIRCUIT DESIGN (Phase 1)	\$75,804.76
CIVIL / STRUCTURAL ENGINEERING (Phase 1)	\$0.00
CONSTRUCTION ENGINEERING INSPECTION	\$40,000.00
<small>(Estimated Construction Engineering Inspection cost based on 0 days @ \$1500 per day)</small>	
UTILITY CROSSING	\$0.00
<small>(0 new utility crossings @ \$4000 per crossing, includes application, engineering review, and right of entry)</small>	
RIGHT OF ENTRY FEE	\$0.00
<small>(Right of Entry Fee of \$1,500 is valid for 60 days, after 60 days, additional fees of \$750 per 30 days are required.)</small>	
FLAGGING SERVICES	\$48,500.00
<small>(Estimated Flagging Services cost based on 25 days @ \$1250 per day)</small>	
AC POWER SERVICE	\$34,000.00
<small>(Includes all Power Service Charges not included in other costs)</small>	
OTHER: PNWR (\$5,000); Fiber Extension (\$71,800); Fiber Hook-up (\$8,338); 10% Contingency (\$34,407)	\$114,545.00
TOTAL ESTIMATE COST	\$1,571,757.75 (USD)

DATE: 9/26/22

RESPONSIBLE PARTY:

Name: City of Wilsonville
 Number: TBD
 Contact: Zaoh Welgel

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.