



Resolution 2004-016

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PORTLAND & WESTERN RAILROAD, INC. FOR DESIGN OF IMPROVEMENTS TO THE SUNSET RAILROAD CROSSING

WHEREAS, the City obtained approval for alterations to the Sunset railroad crossing through ODOT Order No. 50202 dated November 21, 2003; and

WHEREAS, the City desires the Railroad to provide design engineering for work to be performed by the Railroad and its Contractors; and

WHEREAS, the cost of this railroad design work is estimated to be \$31,440; and

WHEREAS, the City Engineer recommends a contingency of 10% (\$3,144) for unanticipated costs under this agreement.

NOW, THEREFORE, THE CITY RESOLVES AS FOLLOWS:

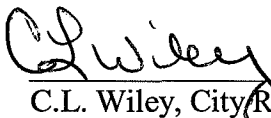
Section 1: The City Manager is authorized to finalize and sign with the Portland & Western Railroad the *Agreement For Provision Of Preliminary Engineering Services In Connection With Grade Crossing Improvements*.

Section 2: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 24th day of February 2004.


Mark O. Cottle, Mayor

ATTEST:


C.L. Wiley, City Recorder

**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 "Railroad"), and the CITY OF SHERWOOD, a municipality (hereinafter "City"), made this ____ day of February, 2004, is intended to cover preliminary engineering services in connection with alteration of the Sunset Boulevard crossing (hereinafter "Crossing") of the Railroad's tracks in Sherwood, Oregon.

WHEREAS, City has obtained approval for alterations to the Crossing as described in the attached Oregon Department of Transportation's Order No. 50202 dated November 21, 2002 ("ODOT Order"); and

WHEREAS, City desires Railroad to provide preliminary engineering for work to be performed by Railroad and/or its Contractors; and

WHEREAS, Railroad agrees to provide preliminary engineering services for the Crossing.

NOW, THEREFORE, the parties hereto agree 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.* All engineering performed prior to commencement of construction, including but not limited to preparation of plans, specifications and cost estimates.
- 1.2 *Railroad's Contractor.* A contractor selected by Railroad to perform the part or all of the alteration or construction of the Crossing covered by this Agreement.
- 1.3 *Exhibit A.* The attached document defines the preliminary engineering cost to develop plans, specifications and final cost estimates for work defined in ODOT order.
- 1.4 *Railroad's Consulting Engineer.* The consulting engineer selected by Railroad to perform part or all of preliminary engineering services in conjunction with alteration or construction of the Crossing. Railroad's Consulting Engineer shall be a licensed professional engineer registered in the State of Oregon.

2. SERVICES

- 2.1 *Basic Services.* Railroad and/or Railroad's Consulting Engineer will proceed expeditiously to develop engineering plans, specifications and a construction cost estimate in accordance with the ODOT Order.

2.2 *Additional Services.* If authorized in writing by City, Railroad may furnish or obtain Additional Services. These services are not included as part of the Basic Services except to the extent otherwise provided in the Exhibit A. Payment for such Additional Services shall be as set forth in a Supplement to this Agreement.

3. PAYMENT

Railroad will normally invoice City monthly for services performed under this Agreement. City agrees to accept the invoice or reject and return it to Railroad within 10 days of receipt. City agrees to pay all invoices not rejected by it within 30 days of receipt.

4. TERMINATION

City may terminate this Agreement at its convenience, upon written notice, effective upon delivery. In such event, Railroad will be entitled to compensation for the services performed up to the date of termination.

5. DESIGN REVIEW

After Railroad has submitted a complete set of plans, specifications and cost estimates to City, City will have two weeks to review and provide its approval or comments to Railroad. Upon approval, it is anticipated that Railroad will prepare final construction contract documents for City review and execution, after which bidding and, in turn, construction will commence.

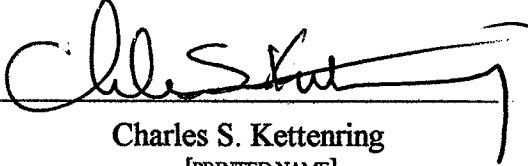
6. MISCELLANEOUS PROVISIONS

- 6.1 If any of the work described in the Exhibit A shall have been performed prior to execution of this Agreement by all parties hereto, then in such event this Agreement shall take effect as of the date such work actually commenced.
- 6.2 This Agreement and the accompanying Exhibit A and ODOT Order constitutes the entire agreement between the parties and supersedes any prior agreements and conditions. This Agreement can be modified only by written instrument signed by both parties.
- 6.3 Exhibit A represents a cost estimate by Railroad based on the provisions of the ODOT Order. Expenditures will not exceed estimate unless scope of project is altered.

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 SHERWOOD

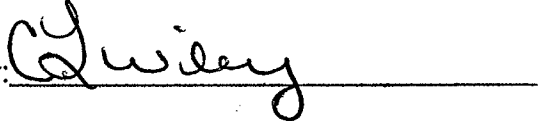
By: 

Charles S. Kettenring

[PRINTED NAME]

VP Engineering

[TITLE]

By: 

C.L. Wiley

[PRINTED NAME]

Asst City Mgr.

[TITLE]

