



*Home of the Tualatin River National Wildlife Refuge*

# **CITY COUNCIL MEETING PACKET**

**FOR**

**Tuesday, March 1, 2011**

**Sherwood City Hall  
22560 SW Pine Street  
Sherwood, Oregon**

**6:00 pm Executive Session**

**(Pursuant to ORS 192.660 (2)(d), Labor Negotiator Consultations)**

**6:30 pm Work Session**

**7:00 pm Regular City Council Meeting**

**Work Session**

**(Continued after regular Council meeting)**



**6:00 PM EXECUTIVE SESSION**

**6:30 PM WORK SESSION**

**REGULAR CITY COUNCIL MEETING**

**1. CALL TO ORDER**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**4. CONSENT:**

- A. Approval of February 15, 2011 City Council Minutes**
- B. Approval of February 21, 2011 City Council Minutes**
- C. Resolution 2011-015 Expressing support for and authorizing staff to apply for Transportation Growth Management Grants to serve the Sherwood community**

**5. NEW BUSINESS**

- A. Resolution 2011-016 To Ratify the Contract Agreement between the City of Sherwood and the American Federation Of State, County and Municipal Employees (AFSCME); and to authorize the City Manager to sign the successor Collective Bargaining Agreement between the City Of Sherwood and the American Federation Of State, County And Municipal Employees (AFSCME) (Anna Lee, HR Manager)**
- B. Resolution 2011-017, a Resolution authorizing the City Manager to enter into a contract with Portland and Western Railroad for the reconstruction of the SW Oregon Street railroad crossing (Bob Galati, City Engineer)**

**6. CITIZEN COMMENTS**

**7. CITY MANAGER REPORT**

**AGENDA**

**SHERWOOD CITY COUNCIL  
March 1, 2011**

**6:00 pm Executive Session  
(Pursuant to ORS 192.660 (2)(d), Labor  
Negotiator Consultations)**

**6:30 pm Work Session**

**7:00 pm Regular City Council Meeting**

**Work Session  
(Continued after regular Council Meeting)**

**Sherwood City Hall  
22560 Pine Street  
Sherwood, OR 97140**

## 8. COUNCIL ANNOUNCEMENTS

## 9. ADJOURN

### **How to Find Out What's on the Council Schedule:**

City Council meeting materials and agenda are posted to the City web page at [www.sherwoodoregon.gov](http://www.sherwoodoregon.gov), by the Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the YMCA, the Senior Center, and the City's bulletin board at Albertson's. Council meeting materials are available to the public at the Library. The public may make copies of any Council meeting materials, at no charge.

### **To Schedule a Presentation before Council:**

If you would like to appear before Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder Sylvia Murphy by calling 503-625-4246 or by e-mail to: [citycouncil@ci.sherwood.or.us](mailto:citycouncil@ci.sherwood.or.us).



**SHERWOOD CITY COUNCIL MINUTES**  
**22560 SW Pine St., Sherwood, Or**  
**February 15, 2011**

**WORK SESSION**

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 6:32pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Bill Butterfield, Matt Langer and David Luman.
3. **STAFF PRESENT:** City Manager Jim Patterson, Community Services Director Kristen Switzer, Events Coordinator Denise Berkshire, Finance Director Craig Gibons, Economic Development Manager Tom Nelson, Planning Manager Julia Hajduk, Assistant Planner Zoe Monahan, Police Chief Jeff Groth, Public Works Director Craig Sheldon and City Recorder Sylvia Murphy.
4. **TOPIC DISCUSSED:** Special Events Permits. Kristen Switzer and Denise Berkshire briefed the Council on the subject and presented a power point presentation (see record, Exhibit A). Discussion followed. Staff provided a draft example of fees (see record, Exhibit B). Discussion followed and Council asked for more examples of potential fees. Staff to provide more information at a future date.
5. **ADJOURNED:** Mayor Mays adjourned the Work Session at 7:09pm and convened to the regular Council meeting.

**REGULAR COUNCIL MEETING**

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:15pm.
2. **PLEDGE OF ALLEGIANCE AND ROLL CALL:**
3. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Robyn Folsom, Bill Butterfield, Matt Langer and David Luman.
4. **STAFF PRESENT:** City Manager Jim Patterson, Police Chief Jeff Groth, Finance Director Craig Gibons, Community Development Director Tom Pessemier, Economic Development Manager Tom Nelson, Public Works Director Craig Sheldon, Planning Manager Julia Hajduk, Assistant Planner Zoe Monahan and City Recorder Sylvia Murphy.

Mayor Mays addressed the Consent Agenda and asked for a motion.

**5. CONSENT AGENDA:**

- A. Approval of February 1, 2011 City Council Minutes**
- B. Resolution 2011-011 Reappointing Ivonne Pflaum to Budget Committee**

- C. Resolution 2011-012 Appointing a Budget Officer for Fiscal Year 2011-12
- D. Resolution 2011-013 Designating the City Manager or designee to carry out labor negotiations on behalf of the City
- E. Resolution 2011-014 Authorizing an Intergovernmental Agreement for services between the City of Sherwood and the Sherwood Urban Renewal Agency

**MOTION: FROM COUNCIL PRESIDENT DAVE GRANT TO APPROVE THE CONSENT AGENDA, SECONDED BY COUNCILOR LINDA HENDERSON, ALL COUNCIL MEMBERS VOTED IN FAVOR.**

**6. PRESENTATIONS:**

- A. Recognition of Eagle Scouts. No scouts were present.

**7. PUBLIC HEARINGS:**

- A. Ordinance 2011-001 Amending multiple sections of the Zoning and Community Development Code including Divisions II, III, V, and VIII

Mayor Mays stated the City Council held a public hearing at their previous meeting of February 1, 2011 on Ordinance 2011-001 and Ordinance 2011-002 to received testimony. Mayor Mays stated the Council discussed some changes to the legislation prior to receiving testimony and then closed the public hearings and continued the business to this meeting. Mayor Mays stated Council asked staff to bring back the legislation with modifications discussed by Council.

Mayor Mays asked for Council discussion or questions on the proposed ordinances.

Councilor Henderson referenced page 36 of the Council packet, Section 16.98.030 Material Storage and asked for clarification on “external” and asked if this means outside and not attached? Julia replied this is how she would interpret the language.

Councilor Luman asked for clarification; if trees are less than 5” in diameter and are removed they have to be replaced but all the others one don’t, Mr. Luman asked if this is correct. Zoe replied they all need to be replaced unless they fall under an exemption.

Zoe informed the Council the proposed language does not include height limits on hedges and this is one of the discussions Council had at their previous meeting and staff left this language blank for Council to determine the height limits for the residential zones and the nonresidential zones.

(City Recorder Note: Ordinance 2011-001, Exhibit 1-A, Chapter 16.58.030, Section D.6 and Section E.3).

Mayor Mays stated the Council discussed 8’ for residential and 12’ for nonresidential and asked if Council was accepting to this standard. Council conceded unanimously to this standard.

With no other Council comments, Mayor Mays stated the following motion on Ordinance 2011-001.

**MOTION: FROM MAYOR MAYS TO READ CAPTION AND ADOPTED ORDINANCE 2011-001, NOTING THE HEIGHTS OF THE HEDGES BEING 8’ FOR RESIDENTIAL AND 12’ FOR COMMERCIAL, SECONDED BY COUNCILOR BILL BUTTERFIELD. ALL COUNCIL MEMBERS VOTED IN FAVOR.**

Mayor Mays addressed Ordinance 2011-002 and stated the Council held a public hearing at their February 1, 2011 meeting and the hearing was closed. Mayor Mays asked for Council comments, with none heard he asked for a motion.

**B. Ordinance 2011-002 Amending Title 12.12 and 12.20 of the Municipal Code relating to trees on other public property and Homeowner's Association authorization to review tree removal**

**MOTION: FROM COUNCIL PRESIDENT DAVE GRANT TO READ CAPTION AND ADOPTED ORDINANCE 2011-002, SECONDED BY COUNCILOR DAVID LUMAN. ALL COUNCIL MEMBERS VOTED IN FAVOR.**

Mayor Mays addressed the next agenda item.

**8. CITIZEN COMMENTS**

Lori Randel 22710 SW Orcutt, Sherwood came forward and commented regarding damage to her yard and landscape by a subcontractor of Capstone. Ms. Randel stated they were installing the utility lines under the street and through her yard to a pole in her yard. Ms. Randel stated this section of utility lines were for the section 8 housing being put in on Willamette across from her house. Ms. Randel stated no one from the City contacted her asking if she was ok with the work. Ms. Randel stated she checked with her title company and they confirmed there are no recorded easements on her property. Ms. Randel stated she checked with PGE and they stated they did not ask the trench be dug as part of their plan of replacement of the pole in her yard, Ms. Randel said if she had been asked they would have found that the pole was being moved two feet closer to the street and if the trench still needed to be dug it could have been placed as to not remove her bushes. Ms. Randel stated she believes this was a vindictive move on behalf of staff, Capstone and the City. Ms. Randel stated she heard back from Capstone and they offered to replace her butterfly bushes and she said there is a law against replanting this type of bush. Ms. Randel stated neighboring properties have trenches dug and restitution has not been offered to them. Ms. Randel speaking on behalf of a neighbor stated he was not notified of the digging and a trench was dug next to a children's swing set. Ms. Randel stated she called several departments at the City informing staff the trenches were not safe and her trench has now been filled but the trenches and holes on Willamette are still open. Ms. Randel stated the contract workers were working in her neighbor's yard without seeking permission and working on an unstable bench and her neighbor feared someone could get hurt and then sue him as the property owner. Ms. Randel commented regarding section 8 housing and hearing that current residents would not experience parking issues with the development and this is not proving to be true based on the contractors. Ms. Randel stated they have to ask the contractors to move their vehicles from in front of their homes and driveways and stated she did not received mail for a few days and wondered if it was due to the blocked mailbox. Ms. Randel stated several of residents who reside along Willamette would like to meet with staff to see what the plan is for Willamette.

Mayor Mays confirmed with City Manager Patterson that a contractor would contact the property owner even if working in the right of way, Mr. Patterson replied correct. Mayor Mays asked if the contractor or subcontractor failed to notify the property owners of the work that needed to be done. Mr. Patterson said he can't speak as to whether or not they failed to notify a property owner and said Tom Pessemier visited the site today and he asked Tom to inform the Council of his findings.

Tom stated he visited the site and the plans show the hydrant and the pole Ms. Randel is referring to are in the right of way and the plans also show a trench that should go in the right of way back to that pole in order to connect the utilities to it. Tom stated it appears that they bent behind the hydrant to avoid utility conflicts and it possibly could have strayed out of the right of way, but if it did it was for a few inches if at all.

Mayor Mays stated the challenge with some of our older streets is not everyone realizes what represents the right of way on a home site or easements. Mayor Mays stated we want our contractor to be safe and communicate with property owners and work with them to avoid surprises.

City Manager Patterson said concerns raised by Ms. Randel about contractor parking and blocking of driveways is something the City can speak to the contractor about. Mr. Patterson stated Ms. Randel is probably correct that there are no easements on her property and said after viewing an aerial the section of the property that is being worked on is public right of way. Mr. Patterson said in older neighborhoods where private property is adjacent to right of way, there are property owners that have been caring for the landscape and in some case where the City has not cared for the property, it's easy for the property owner to start considering ownership on this land. Mr. Patterson stated if we have done something that has infringed upon a property owner the City will make it right, whatever that is and said it's not the intention of the City, our consulting engineering, Capstone or staff to do that. Mr. Patterson stated staff can do a better job with communicating the property owners on defining right of way and will do this. Mr. Patterson stated the contractor is not responsible for replacement of shrubs in right of way and in this case his understanding is the contractor has offered to replace the shrubs. Mr. Patterson said he appreciates Ms. Randel' comments on the issues and bringing this to our attention as others may have the same concerns.

Councilor Luman asked if they are putting up door hangers informing of the work on individuals properties. Mr. Patterson replied no. Mr. Luman said the contractor should be ensuring there are no open hazards. Mr. Patterson replied he is aware of the areas being taped off, and in some cases the tape is being removed and no longer there. Mr. Patterson said he will ask Tom to get together with the contractor to mitigate these things from happening in the future.

Mayor Mays stated he doesn't believe there was any vindictiveness as mentioned and as a community we want to follow best practices on whatever the issue is and stress the same for our contractors.

Councilor Folsom asked who is responsible for communicating with a neighborhood in this type of situation, Tom's (community development department) or the contractor or who? Mr. Patterson replied in this particular situation of redevelopment the consultants that are hired by Capstone Partners are going to be responsible for the public communication. Mr. Patterson stated Tom Nelson has regular communications with Capstone and the contractor.

Mayor Mays asked to receive other citizen comments.

Christa Trepte 22557 Verdant Terrace Sherwood came forward on behalf of the Woodhaven Home Owner's Association and asked in regards to the proposed language of the corner lots and 8' easements and the reasoning behind this easement and setbacks as this impacts quite a few homes in their association and asked if the Council has voted on this language.

Mayor Mays stated he would ask staff to get together with Ms. Trepte to understand the reasoning behind the language and confirmed that the Council had voted and approved the proposed language this evening.

With no other comments received, Mayor Mays addressed the next agenda item.

## **9. CITY MANAGER AND STAFF REPORTS**

City Manager Jim Patterson stated Police Chief Groth had a report to provide to Council, Chief Groth distributed the Sherwood Police Department 2010 Year End Report (see record, Exhibit C). Chief Groth stated the report did not make it into the Council meeting packet therefore was being provided tonight.

Mr. Patterson provided Council with information on Oregon Street road closure and established detour routes during construction of the Oregon Street Improvements project and said information

can be found on the City's website. Mr. Patterson thanked Jason Water's from the City's Engineering Department for the information.

Mr. Patterson stated there's a meeting scheduled for February 16<sup>th</sup> at 5pm to be held at the Rebekah Lodge to discuss work that Kodiak Pacific Construction is doing on pavers in the Old Town area.

Mr. Patterson informed Council that staff would be participating in an Emergency Management initiative on February 22<sup>nd</sup>, called "Stop Traffic 2011" and said the tabletop exercise will be facilitated by Jeff Ruben with TVF&R and said there will be participants from TVF&R, City of Tualatin, WCCCA and the Sherwood School District.

## **10. COUNCIL ANNOUNCEMENTS**

Councilor Langer reported as the Council Liaison to the BOOTS organization that they had recently met and discussed the coordinator position and BOOTS is currently seeking a person for this position. Mr. Langer stated the BOOTS organization is seeing strong growing momentum business wise, locally and statewide. Mr. Langer stated the 2012 St. Patrick's Celebration was being brainstormed and said Clancy's was working on their Special Events Permit for this event.

Mr. Langer stated information on BOOTS can be found on Facebook.

Councilor Folsom thanked Finance Director Craig Gibons for the financial report in the Council meeting packet.

Councilor Henderson reported the Cultural Arts Community Center Steering Committee met this week with the consultant hired to produce the Community Center Business Plan. Ms. Henderson stated this is a very fast tracked project and the consultant may be contacting community groups in the coming weeks seeking input on how their organization would use the center.

With no other Council announcement, Mayor Mays adjourned to a URA Board of Director's meeting.

## **11. ADJOURNED:** Mayor Mays adjourned at 7:50pm.

Submitted by:

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Sylvia Murphy, CMC, City Recorder

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Keith S. Mays, Mayor



**SHERWOOD CITY COUNCIL MINUTES**  
**22560 SW Pine St., Sherwood, Or**  
**February 21, 2011**

**EXECUTIVE SESSION**

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 5:03pm
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Linda Henderson, Bill Butterfield and David Luman. Councilors Robyn Folsom & Matt Langer were absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Jim Patterson, Community Development Director Tom Pessemier and City Recorder Sylvia Murphy. City Attorney Paul Elsner.
4. **TOPIC DISCUSSED:** Litigation, pursuant to ORS 192.660(2)(h), Oregon Street/Railroad Project.
5. **ADJOURNED:** Mayor Mays adjourned the Executive Session at 5:55pm.

Submitted by:

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Sylvia Murphy, CMC, City Recorder

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Keith S. Mays, Mayor



**RESOLUTION 2011-015**

**A RESOLUTION EXPRESSING SUPPORT FOR AND AUTHORIZING STAFF TO APPLY FOR TRANSPORTATION GROWTH MANAGEMENT GRANTS TO SERVE THE SHERWOOD COMMUNITY**

**WHEREAS**, applications have been solicited for Transportation Growth Management (TGM) grants to provide local governments with funding for planning projects that lead to more livable, economically vital, transportation-efficient, sustainable, pedestrian-friendly communities; and

**WHEREAS**, the City of Sherwood has identified three potential projects that would significantly benefit the community while also achieving these grant goals: Town Center Plan, 99W Corridor Plan and Transportation System Plan (TSP) update; and

**WHEREAS**, a plan for the Town Center is needed to address updated Metro Functional Plan requirements and would serve as a foundation for a 99W corridor plan and TSP update by better defining the Town Center area, land use assumptions and vision for the area, therefore should be started first; and

**WHEREAS**, an update of the TSP is needed to update and re-calibrate the plan since the adoption of four concept plans and minor amendments and to ensure consistency with the Regional Transportation System Plan; and

**WHEREAS**, a 99W corridor plan is needed to evaluate existing zoning and transportation along the 99W corridor to develop strategies for more efficient and effective development; and

**WHEREAS**, it is recognized that an eleven percent match is required which can be provided through in-kind staff labor and services or a monetary match; and

**WHEREAS**, The City of Sherwood has determined that there is the staff capacity and/or funds available to meet this match need for these projects.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** It is in the city's interest to commence a Town Center Plan, Corridor Plan and TSP update when grant funds are available.

**DRAFT**

**Section 2.** Staff is authorized to submit a TGM grant application for a Town Center Plan, TSP update and 99W Corridor Plan. In the event all three of these projects are not submitted or funded in the 2011 TGM grant cycle, staff is directed to submit for TGM grant funds in the 2012 cycle.

**Section 3:** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 1<sup>st</sup> day of March 2011.**

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Keith S. Mays, Mayor

Attest:

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Sylvia Murphy, CMC, City Recorder

**TO:** Sherwood City Council

**FROM:** Anna Lee, HR Manager

**SUBJECT:** Resolution 2011-016, a resolution to ratify the contract agreement between the City of Sherwood and the American Federation of State, County and Municipal Employees (AFSCME); and to authorize the City Manager to sign the Successor Collective Bargaining Agreement between the City of Sherwood and the American Federation of State, County and Municipal Employees (AFSCME);

**ISSUE:** Should the City Council Approve the signing of the Collective Bargaining Agreement between the City of Sherwood and The American Federation of State, County and Municipal Employees (AFSCME)?

**BACKGROUND:** After several meetings, the City of Sherwood and AFSCME came to a tentative agreement. The agreement is for a rollover of the current contract with one change:

- Article 22 – Section 1 Wage Scales – Updated with current dates changing the COLA minimum only.
- “Section 1. Wage Scales. Effective each July 1, 2011, July 1, 2012, and July 1, 2013, increase the wage scale across the board (by applying percentage increase to first step and maintaining 2.5% between steps), by a percentage equal to the CPI-W, West Index, (Annual Average), minimum 0%, maximum 5%.
- This Agreement is a 3 year contract that will remain in full force and effect until June 30, 2014.

**FINDINGS:** It is in the best interest of the City of Sherwood to approve this tentative agreement with AFSCME. As it not only addresses the current needs of the department also, the long term goals of the City to recruit and retain quality employees.

**RECOMMENDATION:** **APPROVE RESOLUTION 2011-016**, a resolution to ratify the contract agreement between the City of Sherwood and the American Federation of State, County and Municipal Employees (AFSCME); and to authorize the City Manager to sign the Successor Collective Bargaining Agreement between the City of Sherwood and the American Federation of State, County and Municipal Employees (AFSCME);



**RESOLUTION 2011-016**

**A RESOLUTION TO RATIFY THE CONTRACT AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME); AND TO AUTHORIZE THE CITY MANAGER TO SIGN THE SUCCESSOR COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)**

**WHEREAS**, the City of Sherwood and AFSCME members and have been agreed to roll over the current AFSCME Contract with one modification to the contract and reached tentative agreement in February 2011; and

**WHEREAS**, the City of the City of Sherwood and AFSCME have tentatively agreed to a package settlement of all outstanding issues relating to collective bargaining between the parties; and

**WHEREAS**, AFSCME ratified the tentative agreement in February 2011; and

**WHEREAS**, the agreement will remain tentative until ratified by the Sherwood City Council and will be effective upon execution and remain in effect through June 30, 2014; and

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** This agreement is approved and ratified by the Sherwood City Council and is approved for adoption. The Agreement is attached as "Exhibit A".

**Section 2:** The City Manager is hereby authorized to sign the collective bargaining agreement between the City of Sherwood and AFSCME.

**Section 3:** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 1<sup>st</sup> day of March 2011.**

\_\_\_\_\_  
Keith S. Mays, Mayor

Attest:

\_\_\_\_\_  
Sylvia Murphy, CMC, City Recorder

**COLLECTIVE BARGAINING AGREEMENT**

**BETWEEN**

**CITY OF SHERWOOD**

**AND**

**AFSCME LOCAL 1777**

**July 1, 2011 – June 30, 2014**

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## PREAMBLE

This Agreement is entered into between the City of Sherwood, Oregon, hereinafter referred to as the "City" and the City of Sherwood Employees Local 1777, Council 75 of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union". The purpose of this Agreement is to set forth the full and complete Agreement between the parties on matters relating to employment relations.

## ARTICLE 1 - RECOGNITION

Section 1. The City recognizes the Union as the sole and exclusive bargaining agent for the purpose of collective bargaining for all full-time regular employees and for all part-time regular employees working an average of 20 hours or more per week and excluding managerial, supervisory and confidential employees and employees in the police department bargaining unit.

## ARTICLE 2 – DUES DEDUCTION

Section 1. All members of the bargaining unit who are members of the Union as of the effective date of the agreement or who subsequently voluntarily become members of the Union shall continue to maintain membership status in the Union during the term of the Agreement except as expressly modified below.

Section 2. The City will provide for payroll deduction of Union dues and fees upon written authorization by the employee. Payroll deduction authorization cards must be received by the City by the fifteenth (15<sup>th</sup>) day of the month to be recognized as effective for the subsequent month. The City shall deduct from the end-of-the-month paycheck the amount of dues and initiation fees as certified by the Union and transmit to the designated officer of the Union the total amount deducted. The form of such authorization shall be as follows:

I hereby request and authorize deduction from my earnings an amount sufficient to provide for the regular payment of current monthly union dues, as established by Local Union No. 1777, Oregon AFSCME and as certified by it. Any change in that amount shall likewise be so certified. The amount to be deducted shall be monthly remitted to Oregon AFSCME Council 75 and this authorization shall remain in effect during my employment by the entity to which this authorization is directed, as a contract between myself and all other members of the Local Union, unless revoked by me in writing with a copy to the union.

Section 3. Indemnification. The Union shall indemnify, defend, and hold the City harmless from all suits, actions, proceedings and claims against the City or persons acting on behalf of the City, for any relief sought, where liability arises from the sole application of this Article. In the event that any part of Article 2 shall be declared invalid or that all or any portion of the monthly

service fee must be refunded to any non-member, the Union and its members shall be solely responsible for such reimbursement.

Section 4. The City agrees to notify the Union of all new hires in the bargaining unit within two (2) weeks after their date of hire, furnishing the Union with the new employee's name, mailing address, telephone number and position for which they were hired. The City will allow a union representative to meet with new employees for up to fifteen (15) minutes on the new employee's orientation day.

### **ARTICLE 3 - GRIEVANCE PROCEDURE**

Section 1. For the purpose of this agreement, a grievance is defined as any one of the following:

- a. A claim by an employee covered by this agreement concerning the meaning or interpretation of a specific provision or clause of this agreement as it affects such employee;
- b. A claim by the Union concerning the application of a specific provision or clause of this agreement as it affects a specific member of the Union.

An individual employee who does not wish the Union to pursue a disciplinary grievance (under Section 1(b) hereof) may notify the Union in writing at any time. Such notice shall preclude the union from challenging the disciplinary action in any forum. A grievance which is resolved after an individual's exercise of the right to withdraw consent hereunder shall not constitute a precedent with regard to the substance of the grievance in question.

Section 2. Informal Grievance Adjustment. The City and the Union desire to adjust grievances informally -- both supervisors and employees are expected to make efforts to resolve problems as they arise. The informal step in the grievance process -- Step 1 - may be waived in writing by mutual agreement of the City and the employee and/or the Union. Unless so waived, a grievance shall be filed at Step 1 as follows:

Step 1: To commence resolution of a grievance, the employee and/or the Union shall notify the appropriate supervisor that the employee believes a problem exists and shall identify the affected parties. Such notification must occur within seven (7) calendar days of the occurrence which gave rise to the problem, not including the day of the occurrence. For purposes of this section, the appropriate supervisor is defined as the lowest level supervisor/manager delegated authority by the City to deal with the specific problem or concern. The parties involved shall meet to discuss the issues involved and attempt to resolve the problem by developing a solution that all parties can support. If the grievance is resolved, it shall be reduced to writing, signed by all parties involved in the discussion, with a copy to the City Manager and the Union. If a solution is not reached at the meeting, the Union may advance the grievance to Step 2.

Section 3. Formal Grievance Adjustment. The following steps shall be followed in submitting and processing a formal grievance, only after the informal grievance procedures have been completed without reaching a resolution:

Step 2: If the grievance is not settled at Step 1, the employee and/or the Union shall submit the grievance in writing to the Department Head, within fourteen (14) calendar days from the date of the occurrence which gave rise to the problem. The Department Head shall issue a response in writing within fourteen (14) calendar days from the date of presentation, not including the day of presentation, after attempting to resolve the matter.

Step 3: If the grievance is not settled at Step 2, the employee and/or the Union shall present the grievance to the City Manager or his/her designee within seven (7) calendar days from the date of response from the Department Head, or the date such response was due, not including the day of response. The City Manager or his/her designee shall attempt to resolve the grievance and report in writing the decision within fourteen (14) calendar days from the date it is submitted to the City Manager, not including the day of presentation.

Step 4: If the grievance is not settled at Step 3, the Union may pursue the grievance further by filing a written notice of intent to arbitrate the grievance with the City Manager within fourteen (14) calendar days of the date the decision of the City Manager is received, not including the day of receipt. The parties shall request a list of nine (9) Oregon/ Washington arbitrators from the Employment Relations Board. If the parties cannot mutually agree to an arbitrator, they will alternately strike names and the last one will be the arbitrator.

Section 4. The arbitrator shall set a hearing date and shall render a decision within thirty (30) calendar days after the conclusion of the hearing. His or her decision will be subject to the preponderance of the evidence standard. The power of the arbitrator shall be limited to interpreting this Agreement, determining if it has been violated, and to resolve the grievance within the terms of this Agreement. The arbitrator has no authority to add to, delete from, amend, or modify any terms of this Agreement or make a finding in violation of law. The decision of the arbitrator shall be final and binding on both parties. Each party shall be responsible for costs of presenting its own case to arbitration. Costs incurred in connection with the arbitration hearing will be divided equally, provided that the losing party shall be responsible for the arbitrator's fee and expenses.

Section 5. If at any step of the grievance procedure the grievant fails to comply with the time limits or procedures set forth in this Article, the grievance shall be deemed abandoned and non-arbitrable. If at any step of the grievance procedures the City fails to issue a response within the time limits set forth in this Article, the grievance will be advanced to the next step. Processing of the grievance and the time limits referred to in this Article may be waived or extended by mutual agreement in writing.

Section 6. All disciplinary action imposed upon an employee in excess of a verbal reprimand may be protested as a grievance through the regular formal grievance procedure, up to and

including binding arbitration. Disciplinary grievances shall be initiated at Step 2 of this procedure, within fourteen (14) calendar days of the occurrence.

#### **ARTICLE 4 - PERSONNEL FILE**

Section 1. The City, subject to prior notification, shall provide an employee the opportunity to review the employee's personnel file. Copies of the contents of this file requested by the employee shall be provided at the employee's own expense. The official personnel file shall be maintained by the City.

Section 2. The employee may respond in writing, within thirty (30) calendar days, to any item placed in his personnel file and such response shall also be placed in the employee's personnel file. Materials received prior to the date of employment with the City shall not be subject to the provisions of this Article.

Section 3. All letters of warning and reprimands may be removed from an employee's personnel file upon request of the employee and approval of their department manager. If such request is denied, the employee may appeal the decision to the City Manager.

Section 4. Employees shall have the opportunity to review and shall sign any personnel document which reflects any adverse personnel action, prior to such document being entered into the employee's personnel file.

#### **ARTICLE 5 – POSTING AND FILLING OF VACANCIES**

Section 1. Posting of Vacancies. The City will normally post on its website, for not less than five (5) days, notices of job vacancies offered by the City of Sherwood for which employees may apply. The most senior qualified applicant shall be selected when, in the determination of the City, the overall qualifications and abilities of the top two or more applicants are equal. Exceptions to this article include promotions when there is only one employee within a classification series who would qualify for the promotion, vacancies of limited duration or demotion of an employee which is either voluntary or disciplinary.

Section 2. Lateral Transfers. Vacancies may be filled by the voluntary lateral transfer of qualified employees within the City service. Lateral transfers are defined as a transfer of a qualified employee within the same pay range.

Section 3. Reclassification. Positions which are reclassified into higher classifications may be given to the incumbent employee in the position which is to be reclassified.

Section 4. Intent. Nothing in this article is intended to circumvent the layoff and recall process as outlined in Article 10.

## ARTICLE 6 - HOURS OF WORK

Section 1. Work Week / Work Day. The work week shall begin on Sunday at 12:01 A.M. and end 168 consecutive hours later at midnight on the following Saturday.

The regular work day consists of eight (8) or ten (10) consecutive work hours plus an unpaid meal period within any twenty four (24) hour period.

Section 2. Work Schedules. The work schedule shall be determined by the City based on the needs of the City and services to the public. Employees may work the following schedules:

- a. A 5-8 work schedule, which shall consist of five (5) consecutive days of eight (8) work hours each, or
- b. A 4-10 work schedule shall consist of four (4) consecutive days of ten (10) work hours each.
- c. A "flexible" work schedule, based on mutual Agreement between the employee and the City, with notification to the union prior to the implementation of the flexible work schedule. Such flexible work schedule will be equal in total hours worked during the pay period to that of a "5-8" employee but shall have no maximum or minimum number of work hours per day or work days per week, or
- d. A "regular part-time" schedule shall be any schedule to work twenty (20) hours or more per week but less than forty (40) hours per week, or the equivalent on a flexible schedule as set forth in subsection (c) above.
- e. The City may, based on operational need, establish alternative work schedules. The parties specifically agree that an alternative 36/44 schedule may be utilized at the discretion of the Public Works Director for the Public Works Department. The parties agree that if such schedule is utilized, the work week will begin on the middle of the Friday shift for purposes of equalizing the work week to 40 hours per week. Notice of such schedule change will be provided consistent with the labor agreement.

Section 3. Regular Hours. All shifts shall have an established starting and quitting time and that schedule shall be determined by the Department Head.

Section 4. Work Schedule Changes. When the City has knowledge of the need for a change in work schedules, including starting and quitting times, the City shall provide affected employees written notice of the change fourteen (14) days in advance of the change, unless the City lacks knowledge or in instances of unforeseen emergency outside the City's control, in which case the City will provide as much advance notice as possible.

Section 5. Pay for Emergency Schedule Change. The parties agree that employees working in the case of an unforeseen emergency outside the City's control pursuant to Section 4, above, shall be paid time and one-half the employee's regular rate for hours worked outside of the employee's regular hours, as established under Section 3, above. The parties further agree that this overtime premium payment will not pyramid with any other overtime an employee may work during the same workweek.

Section 6. Rest Periods. To the extent possible and consistent with operating requirements of the City, a rest period of fifteen (15) minutes shall be permitted all employees during each scheduled four (4) hour block of work, which shall be scheduled by the City in accordance with specific operating requirements of each employee's duties, and shall be considered on-duty working time. The rest period shall be permitted as nearly as possible to the midpoint of each scheduled four (4) hour block of work.

Section 7. Meal Periods. Employees shall be granted either a thirty (30) or sixty (60) minute unpaid meal period during each work day which shall not be considered on-duty working time. The meal period shall be scheduled as nearly as possible to the midpoint of the employee's scheduled work hours, to the extent possible and consistent with operating requirements of the City.

Only those part-time employees who work more than five (5) hours are entitled to a meal period.

### **ARTICLE 7 - CALL BACK**

Section 1. Whenever an employee is called back to perform emergency or unscheduled work, the employee shall receive a minimum of two (2) hours pay.

### **ARTICLE 8 – OVERTIME/COMPENSATORY TIME**

Section 1. An employee shall be paid time and one-half the employee's regular rate for authorized work in excess of forty (40) hours in a workweek, and for emergency schedule changes in accordance with Article 6, Section 5, provided that there shall be no pyramiding of such overtime. Overtime shall be calculated to the nearest quarter hour. Paid time off (excluding holidays) shall not count toward hours worked for purposes of overtime eligibility.

Section 2. Department managers and supervisors in charge of a shift, are the only employees authorized to require or authorize overtime by employees. Employees will be subject to discipline, up to and including discharge, for unauthorized overtime work.

Section 3. All authorized overtime work by employees, except for exempt classified employees, may be compensated for time off in lieu of pay, at the employees option and upon approval by the City. The compensation rate will be one and one-half (1 ½) hours for each hour of employment worked in excess of the employee's regular forty (40) hour workweek. The maximum accrual is forty (40) hours of compensation time. Such non-exempt employees shall

receive cash payment for all unused compensation time off upon resignation, layoff or dismissal. Such excess of unused compensation overtime shall be paid at the employee's regular rate of pay.

## **ARTICLE 9 - SENIORITY AND PROBATION PERIOD**

Section 1. Seniority. Seniority shall be defined as the total length of continuous service within a classification in the bargaining unit. Continuous service shall be service unbroken by separation from City service, except time spent on military leave as a member of the National Guard or other reserve component of the Armed Forces of the United States shall be included as continuous service.

Seniority shall be terminated if an employee quits, is discharged for just cause, is laid-off and fails to respond to written notice as provided herein, fails to report to work at the termination of a leave of absence, or is retired.

Section 2. Probationary Period. All appointments, including initial, promotional and lateral transfer appointments, shall be tentative and subject to a probationary period. Initial probationary appointments shall be no more than six (6) months of consecutive service.

In unusual cases where the responsibilities of a position are such or performance is such, that a longer period is necessary to demonstrate an employee's qualifications, the City may extend the probationary period up to six (6) additional months of consecutive service, as long as such extension is not arbitrary or capricious. The employee and the union shall be notified in writing of any extension and the reasons therefore.

Upon satisfactory completion of the probationary period, the employee shall be considered as having satisfactorily demonstrated qualifications for the position, shall gain regular status, and shall be so informed by the appropriate supervisor.

During the initial probationary period, an employee may be terminated at any time without appeal. In the case of promotional appointments, the promoted employee may, at the City's discretion, be returned at any time during the probationary period to the employee's previous classification. During the first thirty (30) days of such probationary period, the employee may elect to return to the previous classification. In the event no vacancy exists, the employee will be placed on a recall list and subject to the recall procedures of Article 10, Section 3. In either case, the employee will be returned without loss of seniority to the applicable rate of pay for the previous classification.

## **ARTICLE 10 – LAYOFF AND RECALL**

Section 1. A layoff is defined as an involuntary separation from the City for reasons that do not reflect discredit upon the employee. If a layoff is implemented, layoffs shall be made within each job classification on the basis of merit and fitness, which shall be derived by documented

performance evaluations and other documented performance criteria. If the employees' merit and fitness is not an overriding factor, as determined by the City Manager, who shall not act in an arbitrary or capricious manner, the least senior employee in the affected job classification shall be laid off first.

Section 2. Advance notice will be provided to employees the City intends to layoff as soon as plans are finalized.

Section 3. An employee will remain on the layoff list and be eligible for recall for twelve (12) months.

Employees laid off for a period of more than twelve (12) months lose all seniority credits. Employees recalled within twelve (12) months of their date of layoff shall be recalled in the inverse order of layoff. No new employees shall be hired for a classification of work until employees laid off in that classification have been offered an opportunity to return to work at equal pay or similar classification, by certified mail. It shall be the employee's responsibility to ensure that the employee's current address and telephone number is on file at the time the recall occurs. An employee so recalled by the City shall have five (5) working days in which to accept the assignment, and two (2) weeks to report if employed elsewhere. If the employee does not accept the assignment or report to work within the times specified, the employee will lose all recall and other seniority rights.

Section 4. No regular employee shall be laid off while temporary employees are retained by the City in the classifications of the employees proposed to be laid off. Temporary employees for purposes of this section are limited to employees hired for the express purpose of performing work created as a result of the layoff, and don't include seasonal or other limited duration employees hired to perform projects distinct from the work created as a result of the layoff.

## **ARTICLE 11 – WORKING OUT OF CLASSIFICATION**

Section 1. When an employee is notified in writing that they will be assigned for a limited period to act in capacity in a higher level of classification for more than a total of ten (10) consecutive or nonconsecutive working days (eight (8) hours or any portion thereof), that employee shall be paid premium pay of five percent (5%).

An employee performing duties out of classification for training and development purposes shall be so informed in writing, and it shall be mutually agreed to by the supervisor and employee. The notice shall state the purpose and length of assignment. During the training, there shall be no extra pay for the work. A copy of the notice shall be placed in the employee's file.

## **ARTICLE 12 – BOOT REIMBURSEMENT**

Section 1. Employees required to wear protective boots shall be reimbursed up to \$150 per year for such boots upon presentation of a receipt.

Section 2. The City will supply to Public Works Utility Workers any OSHA/OROSHA required safety equipment, raingear, rubber boots, gloves, coveralls, winter coats or jackets, and uniform pants and shirts (long and short sleeve).

Section 3. Upon supervisory approval, the City will provide rain gear to employees who demonstrate a regular and consistent need for protection from exposure to weather in the performance of their official duties, including but not limited to: Code Compliance, Senior Planner, Associate Planner, Inspectors, Engineering Associate and Senior Project Manager.

**ARTICLE 13 - PAID TIME OFF**

Section 1. Description. The City shall provide a program of earned time off for regular full and part time employees, which can be used to meet the employees’ needs or desires for paid time off from work. The program was implemented in 1998 with the intent of providing employees with the discretion to use PTO for absences due to illness, medical appointments and other personal health needs of the employee or members of his/her family. To accomplish this intent, sick leave accrual was reduced by three (3) days per year and added to PTO accrual. Use of such days are subject to employee discretion.

Section 2. PTO Accrual. PTO accrual rates are determined by a regular employees’ length of continuous service with the City. Full time employees shall accrue PTO each pay period at the following rate:

<b>Yrs of Continuous Service</b>	<b>Accrual Rate of Pay Period</b>	<b>Yearly Accrual Rate</b>	<b>Maximum Accrual</b>
< 3 years	5.23 hours	17 days	26 days
=>3 years	5.85 hours	19 days	29 days
=> 6 years	6.46 hours	21 days	32 days
=> 9 years	7.08 hours	23 days	35 days
=> 12 years	7.69 hours	25 days	38 days
=> 15 years	8.31 hours	27 days	41 days

Part time employees shall accrue PTO at a prorated rate of full time employees. Eligible employees are paid hours up to the actual scheduled hours worked for the particular day in which time off is requested.

Section 3. Trial Employees. PTO and sick leave accrued during the first six (6) months of continuous service shall not be credited as earned PTO and sick leave until the employee completes the initial probationary period.

Section 4. Maximum Accrual. Leave benefits which are earned may be accrued to a maximum of one and one half (1 ½) times the employee’s annual accrual rate (rounded up). Employees will not accrue or be paid for any leave in excess of one and one half times. However, the City may approve temporary accruals and carryovers of more than the maximum allowable amount

when the employee is unable to take time off due to City staffing and work load requirements, or other legitimate reasons, that in the opinion of the Department Head, make use of accrued paid time off benefits unfeasible. Temporary accruals in excess of the allowable amount shall be approved in writing by the City Manager.

Section 5. Procedure for Use of PTO.

- a. To schedule days off other than for illness or injury, an employee must submit a request to the immediate supervisor as far in advance as possible. All requests will be granted on a “first come, first served” basis. If two or more time off requests are received at the same time, then resolution of the conflicting time off request shall be based on seniority. PTO leave request, except in emergency situations, should be made at least two (2) weeks in advance. The immediate supervisor shall respond with the approval or denial within one (1) week of receipt of the request. All requests must be made in writing to be considered. Requests may be denied based upon staffing and workload requirements of the City. Approval of requests will not be unreasonably withheld.
- b. Employees must indicate in writing the number of PTO hours for which payment is requested. The combined total of hours worked and PTO hours cannot exceed the normal working time in any given pay period, except for authorized overtime.
- c. For illness or injury, the employee must notify the immediate supervisor as soon as possible. If the illness extends beyond one (1) day, daily calls must be made to keep the supervisor informed, unless otherwise arranged between the supervisor and the employee.

Section 6. Cash Out. Regular employees shall be paid in one (1) lump sum for any accrued but unused PTO benefits only upon layoff, resignation or dismissal, unless the employee fails to provide the required notice, if any.

Section 7. Sick Leave Accrual. Full time employees shall accrue eight (8) hours of sick leave per month, which may only be used for absences resulting from injury or illness in excess of one (1) day, or emergency leave. Part time employees shall accrue sick leave at a prorated rate of full time employees. Sick leave will be accrued in a separate bank and employees will not accrue or be paid any sick leave in excess of 720 hours.

Section 8. Applicability. Sick leave benefits may be used by regular employees for absences due to personal injury, illness or temporary disability in excess of one (1) day, which keeps the employee from performing their regular duties. Sick leave benefits may also be used for absences occasioned by the illness or injury of an immediate family member, or for reasons associated with the Family Leave Act.

Section 9. PTO Usage with Sick Leave. If an employee misses one day of work for an injury, illness or temporary disability, the first day of paid leave shall come from the bank of accrued PTO leave unless the employee provides notice from a health care provider justifying the need for the leave, in which case an employee may access sick leave accrual immediately. Any

additional leave necessary for an injury, illness or temporary disability in excess of the first day of PTO shall come from the bank of accrued sick leave. When an employee is absent on more than one occasion for the same occurrence, only one day of PTO is required prior to utilizing paid leave from the employees' accrued bank of sick leave.

Section 10. On-the-Job Injury. When an employee is absent from work because of an on-the-job injury, time off will not be charged to sick leave except as provided below. The employee may select one of the following options:

- a. The employee may elect to receive only his/her workers' compensation payments.
- b. The employee may voluntarily turn in their first and all subsequent worker's compensation payments and will, in turn, receive their regular gross wages, and the following will occur:
  1. Employees shall use available sick leave for integration with their workers' compensation payments in order to receive their regular gross wages. In this situation a check for full gross wage will only be received if the employee has available sick leave. Deduction to sick leave shall be proportional to the difference between the workers' compensation payments and regular gross wages.
  2. In the event an employee withholds any of his/her workers' compensation payments, compensation will fall into the integration of sick leave formula described above from the first day of injury. In the event this occurs, the City can automatically deduct any overpayment in full from the employee's next paycheck, or any subsequent checks if there is not a sufficient amount in the next paycheck.

Section 11. Exempt Employees' Administrative Leave. Bargaining unit members who are exempt employees shall receive forty (40) hours of administrative leave each year on January 1<sup>st</sup> or upon hire in which case the amount of the leave credited will be pro-rated. This administrative leave may be used as soon as it is credited and may not be carried over to the next calendar year.

In consideration of the fact that exempt staff work hours in excess of forty (40) per week, exempt staff will be allowed to flex their schedules upon supervisory approval.

## **ARTICLE 14 - HOLIDAYS**

Section 1. All full-time employees shall be entitled to the following holidays:

New Year's Day	January 1
Martin Luther King's Birthday	3rd Monday in January
Memorial Day	Last Monday in May

Independence Day	July 4th
Labor Day	1st Monday in September
Veteran's Day	November 11th
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	4th Friday in November
Christmas Day	December 25th

Section 2. Holiday Pay. Regular full time employees who do not work on a holiday shall receive eight (8) hours holiday pay at their regular rate of pay, provided they have worked or been paid for their last scheduled workday before and their first scheduled workday after the holiday. Regular part time employees working twenty (20) hours or more a week who do not work on a holiday shall receive a portion of the eight (8) hours holiday pay at their regular rate of pay equivalent to the percentage of their hours worked to a full forty (40) hour work week, provided they have worked or been paid their last scheduled workday before and their first scheduled workday after the holiday. An unexcused absence from scheduled work on a holiday will result in loss of holiday pay for that holiday. Employees who work on a holiday will receive their holiday pay in addition to regular pay for work on the holiday or additional time off within the work week in which the holiday falls.

Section 3. Except for employees regularly scheduled to work on a Saturday or Sunday, when a holiday falls on a Sunday, the following Monday shall be deemed to be a holiday in lieu of the day observed. When a holiday falls on a Saturday, the preceding Friday shall be deemed to be a holiday in lieu of the day observed.

**ARTICLE 15 - SPECIAL AND EMERGENCY LEAVE**

Section 1. Jury Duty. Employees who are called to serve on a jury, or served with a subpoena as a witness in any court proceeding concerning a matter which is not personal to the employee, shall be allowed time off from work without loss of pay or accrued benefits. Any fees received shall be endorsed over to the City for deposit in the City's General Fund, provided, however, that any fees received for such duty occurring on days that are not regular workdays for the employee shall be retained by the employee. Employees excused from jury duty or court proceedings are expected to work the remainder of their regular workday.

Section 2. Military Leave. Military leave shall be granted in accordance with state and federal law.

Section 3. Leave with Pay. Except as otherwise established by this agreement in the form of paid time off, holidays, jury duty, emergency leave, in-service training, and the other forms of leave and training specifically identified, leave with pay is not allowed, except by express authorization of the City Manager.

Section 4. Family Medical Leave. Consistent with City policy, an employee may be eligible for Family Medical Leave to care for a spouse, parent, parent-in-law or child with a serious health condition as defined under federal and state law, or sick child requiring home care, for the

employee's own serious health condition as defined under federal and state law, or for parental leave for the birth of a child or for placement of a child under 18 years of age for adoption or foster care. As a general rule, such leave shall not exceed twelve (12) weeks within any twelve (12) month period, except as otherwise required by law. An employee may qualify for more than twelve (12) weeks of leave under OFLA and FMLA.

Where practicable, and subject to the approval of the treating health care provider, the employee shall make a reasonable effort to schedule health care treatment or supervision to minimize disruption of the employer's operations.

An employee returning from a FMLA or OFLA leave will have reinstatement rights pursuant to federal and state law.

#### Section 5. Emergency Leave.

- a. Generally. When a death or serious illness occurs in an employee's immediate family, the employee may request up to three (3) workdays paid emergency leave, which will be deducted from the employee's sick leave balance. Emergency leave pay shall be that amount the employee would have earned had the employee worked their regular work schedule. All emergency leave shall be approved in writing by the Department Head, setting out the terms, conditions, and length of said leave.
- b. Benefit. Emergency leave may not exceed three (3) workdays in any calendar year unless approved by the City Manager. Emergency leave in excess of three (3) workdays not approved by the City Manager shall be treated as PTO pursuant to the Paid Time Off section, or be treated as leave without pay should all PTO be exhausted.
- c. Definition. "Immediate family" for purposes of this section is defined as spouse, children, grandchildren, parents, grandparents, siblings, mother-in-law, father-in-law, brother or sister-in-law, or any relative residing in the employee's immediate household.

Section 6. Union Leave. One authorized Union representative, upon written request from the Union given 30 days in advance, may be given a short-term leave of absence of up to one week per fiscal year without pay to transact business for this bargaining unit of the Union. The Union will cooperate with the Employer by making requests for such leave in a manner which will minimize interference with the Employer's operations. The Union agrees to reimburse the City for the costs of any benefits the employee earned or enjoyed during the period of unpaid union leave (such as PERS, PTO accrual, sick leave accrual, health insurance benefits, etc.).

## **ARTICLE 16 - LEAVE WITHOUT PAY**

**Section 1.** Leave without pay may be granted to any regular employee by the City Manager for any period of time up to twelve (12) months for personal, professional, or family reasons, or for time beyond the medically certified period of temporary disability following childbirth. The City Manager shall have the discretion to grant leaves without pay for other reasons consistent with the best business interest of the City.

**Section 2. Authorization.** All leave without pay must be requested by the regular employee in writing as soon as the need for such leave is known. All written requests shall state the reason for the leave and the amount of leave time needed. Written requests shall be submitted to the employee's department head, and referred to the City Manager with the department head's recommendation. All leave without pay shall be approved in writing by the City Manager setting out the terms, conditions, and length of said leave. The City Manager has the discretion to reduce or deny the leave without pay request when the reduction or denial is in the best business interest of the City.

**Section 3. Return to Work.** Failure to return from any leave without pay on or before a designated date, will be considered a voluntary resignation and cause for denying re-employment within the City. Employees on leave without pay may return to work early, provided notice is given to their department head at least two (2) regular City workdays in advance.

**Section 4. Benefits.** Paid time off and sick leave benefits are not earned while an employee is on leave without pay. Unless otherwise required by law, the City will not pay any portion of the employee's group medical and life insurance premiums while the employee is on leave without pay, though the employee may elect to personally continue such coverage as provided under the terms of such policies. At the City Manager's discretion, an employee may be required to use any earned but unused paid time off and holiday benefits before a leave without pay is granted.

**Section 5. Re-employment.** Employees returning from an approved leave without pay are entitled to return to their same position or a similar position in the same class and pay step. Provided, however, if the employee's anniversary date fell during a leave without pay period, the employees' anniversary date shall be adjusted accordingly for the time away on leave, unless otherwise required by law.

**Section 6. Certificates.** Employees who are granted a leave without pay for medical or disability reasons must exhaust all accrued sick leave benefits prior to commencing leave without pay. Any employee returning from a leave without pay due to medical or disability reasons must provide a qualified health care provider's certification of the employee's ability to return to work. If the employee was placed on leave without pay status pursuant to the terms of the Physical Examinations section the certificate shall, if possible, be from the health care provider who previously examined the employee.

## **ARTICLE 17 - RETIREMENT**

**Section 1.** PERS Enrollment. After six (6) full calendar months of employment, all employees scheduled to work at least six hundred (600) hour per year shall participate in the State of

Oregon Public Employees Retirement System (PERS) or the Oregon Public Service Retirement Plan. Provided, however, that individuals actively enrolled in PERS as a result of prior employment shall be immediately re-enrolled upon hire. The City shall pay the employee's contribution in addition to the employer's share of the cost of the retirement plan for each employee. Employees do not have the option of receiving this pick up as salary and paying their contribution directly.

### **ARTICLE 18 - BULLETIN BOARDS**

Section 1. The City agrees to allow the union to furnish and maintain a bulletin board in each City facility in which bargaining unit members work. The Union shall use the boards only for notices and bulletins concerning Union matters.

### **ARTICLE 19 – STEWARDS**

Section 1. Employees selected by the Union to act as Union representatives shall be known as "stewards". The names of employees selected as "stewards" and the names of other Union representatives who may represent employees shall be certified in writing to the City by the Union.

Section 2. An authorized Union representative and employee(s) directly involved in a particular grievance shall be allowed to attend meetings with representatives of the City without loss of regular pay. The Union shall advise the City as to which employee(s) will attend such meeting. It shall be the responsibility of each individual employee to provide advance notice of the meeting to his/her immediate supervisor.

The employer agrees that accredited representatives of AFSCME may have access to employees in the bargaining unit during business hours, provided the employee and the representative are not on City time and the representative has received managerial approval to be in City facilities. Such access may be permitted on a case by case basis without loss of pay when the City determines, in its sole discretion, that such access is in the best interests of the City and does not interfere with the normal operations of the department.

### **ARTICLE 20 – INSURANCE**

Section 1. Effective upon execution of this Agreement, the City will provide group medical, dental, and vision insurance coverage for all regular full-time employees and regular part-time employees who work 20 or more hours per week. The terms, conditions, and extent of the City's group insurance programs may be modified or canceled at any time by action of the City Council or the insuring agency. The City will pay 87% of the premium cost of the PPO Plan option in place for each tier of coverage for full-time employees. City contributions for part-time employees shall be pro-rated in accordance with City policy. Employees electing alternative plan options made available by the City may apply these contribution amounts towards such

coverage and are responsible for any remaining premium costs. Any premium costs not covered by the City shall be paid by the enrolled employee through automatic payroll deduction.

Section 2. During the term of this Agreement, the City will provide group term life insurance and accidental death and dismemberment for each regular, full time employee at one and one-half (1 ½) times the employee's annual salary, \$75,000 maximum. The City will also provide \$2,000 life insurance coverage for dependents.

Section 3. Regular, full time employees may enroll in a program of long term disability insurance at 50% of monthly salary up to a maximum monthly benefit of \$3,000. Premium for this plan are paid 50% by the City and 50% by the employee.

Section 4. An optional accidental death and dismemberment plan for all regular, full time employees shall be offered by the City which is equivalent to the current Transamerica AD&D plan. Premiums for this plan will be paid for by the employee.

Section 5. The City shall provide to employees in the bargaining unit an Internal Revenue Code Section 125 Flexible Spending Plan with pre-tax health and dependent benefits.

Section 6. The group medical, dental, and vision insurance coverage provided in Section 1 above will be subject to annual review and recommendations by an insurance benefit committee consisting of an equal number of represented and non-represented committee members.

## **ARTICLE 21 - DISCIPLINE AND DISCHARGE**

### Section 1. Discipline.

- a. Disciplinary action shall include only the following: Oral reprimand; written reprimand; suspension without pay; demotion; or discharge.
- b. Disciplinary action may be imposed upon an employee only for just cause. Disciplinary action is usually progressive in nature, but may be imposed at any level if supported by just cause and based upon the seriousness of the offense and the particular circumstances of the employee. It is recognized by the parties that each situation calling for possible disciplinary action is unique to its particular circumstances and that appropriate disciplinary action will be considered in the context of such circumstances.
- c. Disciplinary action imposed upon an employee, other than oral reprimand, may be processed as a grievance through the regular grievance procedure.

## ARTICLE 22 -- COMPENSATION

Section 1. Wage Scales. Effective each July 1, 2011, July 1, 2012, and July 1, 2013, increase the wage scale across the board (by applying percentage increase to first step and maintaining 2.5% between steps), by a percentage equal to the CPI-W, West Index, (Annual Average), minimum 0%, maximum 5%.

Section 2. Salary Steps. All step increases within the salary matrix established in Exhibit "A" shall be contingent upon satisfactory performance as indicated in an employee's written performance evaluation. This annual evaluation will also include a review of the employee's job description for completeness and accuracy. A performance evaluation may be grieved under Article 3 through Step 3 of the grievance procedure if an employee receives an evaluation which "Does Not Meet Standards." If an employee does not receive his/her annual performance evaluation within two months after the employee's anniversary date, the evaluation will be presumed satisfactory and any step increase due will be granted retroactively to the employee's anniversary date.

Section 3. Two-Step Increments. Employees who have satisfactorily completed five (5) years within the City will receive two-step increments for their anniversary adjustments upon receipt of a satisfactory performance evaluation.

Section 4. Unless otherwise prohibited by law, the anniversary date and performance evaluation period of an employee taking a leave without pay of thirty (30) calendar days or longer, shall be postponed until the employee has returned to work and completed as many days of continuous employment as the length of the leave without pay period.

Section 5. Mileage and expense reimbursement will continue pursuant to existing City policy.

Section 6. The costs of obtaining City required licenses, certifications and physical exams shall be reimbursed consistent with existing City policy.

Section 7. Promotion. Upon promotion, an employee will advance to the new salary range and to the step in the new salary which provides at least a 5% increase from the employees former salary step. A new anniversary date will be established upon the effective date of promotion.

Section 8. Reclassification. When an employee's position is reclassified upward the employee shall be placed on the new salary range at the first step equal to or higher than the employees former salary step.

Section 9. Probationary Employees. Upon completion of initial trial service or promotional probation, and employee shall be granted a step increase. A new anniversary date will be established upon the date of the successful completion of trial service or promotion probation.

## **ARTICLE 23 – SAVINGS CLAUSE**

Section 1. Should any article, section, or portion of this Agreement or supplement thereto be held unlawful or unenforceable by an opinion of the Attorney General of the State of Oregon, be finally adjudged by the Supreme Court, or other court of appropriate jurisdiction, or any administrative agency of the State of Oregon having jurisdiction over the subject matter, to be in violation of any state or federal law, then such portion or portions shall become null and void, and the balance of this Agreement remains in effect, except those remaining provisions which are so essential, connected and dependent upon the unlawful or unenforceable part that it is apparent that such remaining provisions would not have been agreed to without such other parts and the remaining provisions which, standing alone, are incomplete and incapable of being executed in accordance with the intent of this Agreement. Both parties agree to immediately renegotiate any part of this Agreement found to be in such violation, and to bring it into conformance. The parties agree that the labor agreement will not serve to restrict the City's obligation to comply with the federal and state law concerning its duty to accommodate individuals with disabilities.

Section 2. Funding. The parties recognize that revenue needed to fund the wages and benefits provided by the agreement is subject to established annual budget procedures. The wages and benefits provided herein may not be cut unilaterally, but the parties recognize that, if there are insufficient funds to maintain the level of wages and benefits provided herein, the parties will meet and confer on that subject on request of either party. The City cannot and does not guarantee any level of employment in the bargaining unit covered by this agreement. The City makes no guarantee as to passage of budget requests, approval thereof, or necessary sources of revenue.

## **ARTICLE 24 – MANAGEMENT RIGHTS**

Section 1. The Union recognizes and agrees that responsibility for management of the City and direction of the various departments rests solely with the City, and the responsible department heads. Except where abridged by specific provisions of this Agreement, the Union recognizes and agrees that in order to fulfill this responsibility, the City shall retain the exclusive right to exercise the regular and customary functions of management, including, but not limited to: directing the activities of the City and its Departments; determining standards and levels of service and methods of operation, including subcontracting, where Union members are not denied work opportunities as a result; the introduction of new technology and equipment; hiring, promoting, transferring and laying off employees; disciplining and discharging employees for just cause; promulgating policies and procedures; determining work schedules; assigning work; and, with no less than sixty (60) days advance notice to the Union, modifying how employees are paid or the dates employees are paid.

Management rights and prerogatives, except where abridged by a specific provision of this Agreement, are not subject to the grievance procedure specified in Article 10. The City retains all rights, powers and privileges not expressly specified in this section and not specifically abridged by this Agreement or statute.

Section 2. Nothing in this Agreement, or in this Article, will be construed to prevent the City from initiating any program or change which is not contrary to an express provision of this Agreement.

## **ARTICLE 25 – CONTINUITY OF SERVICES**

Section 1. During the term of this Agreement the Union's membership will not participate in any strike against the City under any circumstances. For the purpose of this Agreement, "strike" is defined as any concerted stoppage of work, slow down, speed up, sit-down, absence from work upon any pretense that is not found in fact, or any interference which affects the normal operation of the City.

Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established in the City by the Union or by any other labor organization when called upon to cross a picket line in the line of duty.

Section 2. In the event of a strike, work stoppage, slowdown, picketing, observance of a picket line or other restriction of work in any form, either on the basis of individual choice or collective employee conduct, the Union will immediately upon notification attempt to secure an immediate and orderly return to work. This obligation and the obligations set forth above shall not be affected or limited by the subject matter involved in the dispute giving rise to the stoppage or by whether such subject matter is or is not subject to the grievance and arbitration provision of this Agreement.

Section 3. In the event of a violation of this provision by the Union or members of the Union, the City may discipline or discharge any employee involved in such activity.

## **ARTICLE 26 – CLOSURE**

Section 1. Pursuant to their statutory obligations to bargain in good faith, the City and the Union have met in full and free discussion concerning matters of employment relations as defined by ORS 243.650 (et. seq.). This contract incorporates the sole and complete agreement between the City and AFSCME Council 75 resulting from these negotiations.

Section 2. This Agreement is subject to amendment, alteration or addition only by subsequent written agreement between, and executed by, the City and AFSCME Council 75 where mutually agreeable.

**ARTICLE 27 – TERM OF AGREEMENT**

Section 1. This agreement shall be effective on July 1, 2011, and shall remain in full force and effect until June 30, 2014.

Section 2. This agreement shall automatically be renewed from year to year thereafter unless either party shall notify the other, in writing, by December 1st that it wishes to modify the Agreement.

**FOR AMERICAN FEDERATION OF  
STATE, COUNTY AND MUNICIPAL  
EMPLOYEES, COUNCIL 75, LOCAL  
1777**

**FOR THE CITY OF SHERWOOD**

\_\_\_\_\_  
Philip Smith, Local 1777 President

\_\_\_\_\_  
Jim Patterson, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rob Wheaton, Council Representative

\_\_\_\_\_  
Date

**APPENDIX A**

**Effective to June 30, 2011, the pay scale for the employees in the bargaining unit will be as follows:**

<b>Position</b>	<b>Group</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>	<b>Step 6</b>	<b>Step 7</b>	<b>Step 8</b>	<b>Step 9</b>	<b>Step 10</b>	<b>Step 11</b>
Library Page 1	<b>1</b>	10.39	10.65	10.91	11.18	11.46	11.75	12.04	12.35	12.65	12.97	13.30
Recreational Assistant												
Library Page 2	<b>2</b>	12.15	12.46	12.77	13.09	13.41	13.75	14.09	14.44	14.81	15.18	15.56
Admin Asst I	<b>3</b>	13.98	13.98	13.98	13.98	13.98	13.98	13.98	13.98	13.98	13.98	13.98
Library Asst I												
Recreation Specialist												
Admin Asst II	<b>4</b>	15.79	16.18	16.59	17.00	17.43	17.86	18.31	18.77	19.24	19.72	20.21
Library Asst II												
Maint Wkr I												
Admin Asst III	<b>5</b>	17.52	17.96	18.41	18.87	19.34	19.83	20.32	20.83	21.35	21.89	22.43
Maint Wkr II												
Engineering Tech I												
Finance Tech	<b>6</b>	19.28	19.76	20.25	20.76	21.28	21.81	22.36	22.92	23.49	24.08	24.68
Code Compliance/Evid Tech												
Department/Program Coord												
Maint Wkr III												
Permit Specialist												
Public Works Tech												
Mechanic												
Assistant Planner	<b>7</b>	21.01	21.54	22.08	22.63	23.20	23.78	24.37	24.98	25.60	26.24	26.90
Librarian												
Maintenance Worker Lead												
Accountant												
Court Administrator												
Associate Planner	<b>8</b>	22.90	23.48	24.06	24.66	25.28	25.91	26.56	27.22	27.90	28.60	29.32
CADD/GIS Tech												
Engineering Associate I												
Inspector I												
Inspector II	<b>9</b>	24.74	25.36	25.99	26.64	27.31	27.99	28.69	29.41	30.14	30.90	31.67
Senior Accountant												
System Technician												
Business System Analyst	<b>10</b>	26.47	27.14	27.82	28.51	29.22	29.95	30.70	31.47	32.26	33.06	33.89
Senior Planner												
Sr. Project Manager	<b>11</b>	28.32	29.03	29.76	30.50	31.26	32.04	32.85	33.67	34.51	35.37	36.26

**FOR AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 75, LOCAL 1777**

**FOR THE CITY OF SHERWOOD**

\_\_\_\_\_  
Rob Wheaton, Council Representative

\_\_\_\_\_  
Jim Patterson, City Manager

\_\_\_\_\_  
Philip Smith, Local 1777 President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**TO:** Sherwood City Council

**FROM:** Bob Galati, P.E., City Engineer  
(through Tom Pessemier, P.E., Community Development Director)

**SUBJECT: A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PORTLAND AND WESTERN RAILROAD, INC. FOR THE RECONSTRUCTION OF THE SW OREGON STREET RAILROAD CROSSING**

**ISSUE:**The City bid and awarded its portion of the work for the SW Oregon Street/SW Adams Avenue Improvements Project to Northwest Earthmovers, Inc. and in order to complete the reconstruction of the railroad crossing in a timely manner it must enter into a construction and maintenance agreement (contract) with Portland & Western Railroad.

**BACKGROUND:** As part of the SW Oregon Street/SW Adams Avenue Improvements Project the City contracted with Portland & Western Railroad in 2008 to complete the design of the SW Oregon Street railroad crossing as outlined by the Oregon Department of Transportation Rail Division Final Order Number 50673. Portland & Western Railroad has completed plans, specifications and has provided an estimate-of-expense for their portion of the work.

It is imperative that Portland & Western Railroad's work proceed in earnest given the City's desire to complete the SW Oregon Street improvements as quickly as possible. Therefore, staff is recommending that the Sherwood City Council authorize the City Manager to enter into a contract with Portland & Western Railroad based upon the estimate-of-expense provided by the railroad in an amount equal to \$476,863.34 and also authorize a bidding & construction contingency of 15% for a total contract amount not-to-exceed \$548,363.34.

If the City delays this authorization until after Portland & Western Railroad accepts bids, several weeks will be lost, which will impact the construction contract the City has executed with Northwest Earthmovers, Inc.

Funds for this contract and its administration by staff have been authorized and budgeted via City job number 8043.

Staff requests the approval of Resolution 2011-017, authorizing the City Manager to sign appropriate construction and maintenance agreements with Portland & Western Railroad, Inc.

**FINDINGS:** By passing this resolution the City Manager can immediately enter into a Contract with Portland & Western Railroad after bid opening and the railroad can then order equipment and schedule the work.

**RECOMMENDATION:** MOTION TO ADOPT RESOLUTION 2011-017, A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PORTLAND AND WESTERN RAILROAD, INC. FOR THE RECONSTRUCTION OF THE SW OREGON STREET RAILROAD CROSSING.



**RESOLUTION 2011-017**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PORTLAND AND WESTERN RAILROAD, INC. FOR THE RECONSTRUCTION OF THE SW OREGON STREET RAILROAD CROSSING**

**WHEREAS**, the City, as part of the SW Oregon Street/SW Adams Avenue Improvements Project, desires to reconstruct the railroad crossing at SW Oregon Street as permitted by the Oregon Department of Transportation Rail Division; and

**WHEREAS**, a Construction and Maintenance Agreement between the City of Sherwood and Portland & Western Railroad is necessary for both the railroad contractor and City contractor to complete the work permitted by the ODOT Rail Division; and

**WHEREAS**, the City contracted for the design of the railroad reconstruction project through Portland & Western Railroad, Inc. in 2008; and

**WHEREAS**, Portland & Western Railroad has completed the design and is in the process of bidding their portion of the work and has provided an estimate-of-expense in the amount of \$476,863.34; and

**WHEREAS**, the City desires to authorize the City Manager to enter into a construction agreement with Portland & Western Railroad using the estimate-of-expense; and

**WHEREAS**, staff recommends establishing a bidding and construction contingency of 15% of the estimate-of-expense, an amount of \$71,500.00.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1:** The City Manager is hereby authorized to execute a contract, attached as Exhibit A (consisting of Exh.'s A, B, B1, C thru F) with Portland & Western Railroad, Inc. in a form approved by the City Attorney for the project estimate of \$476,863.34.

**Section 2:** The City Council authorizes a bidding and construction contingency of \$71,500.00. Subject to the limitations of city and state rules and other applicable laws, the City Manager is authorized to increase the contract amount and enter into change orders with Portland & Western Railroad, Inc. in an amount of \$71,500.00 for a total contract amount not-to-exceed \$548,363.34.

**Section 3:** This Resolution is effective upon its approval and adoption.

**Duly passed by the City Council this 1<sup>st</sup> day of March 2011.**

\_\_\_\_\_  
Keith S. Mays, Mayor

Attest:

\_\_\_\_\_  
Sylvia Murphy, CMC, City Recorder

Resolution 2011-017

March 1, 2011

Page 1 of 1, with Exhibit A (Draft Contract & Exhibits w/ Estimate-of-Expense, 32 pages)

P&W Agreement No. #08PWR10R

CONSTRUCTION AND MAINTENANCE AGREEMENT

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the PORTLAND & WESTERN RAILROAD, INC., a New York corporation, hereinafter called the "Railway", and the City of Sherwood, of the State of Oregon, whose address is 22560 SW Pine Street, Sherwood, OR 97140, hereinafter called the "Agency";

WITNESSETH:

WHEREAS, in the interest of aiding motor vehicle traffic, the Agency is proposing a project for the a new railroad-highway grade crossing at Oregon Street where the centerline of it crosses the Railway's right-of-way and tracks located at Milepost P-757.90 as shown on Exhibit "A" sketch attached hereto and made a part hereof.

WHEREAS, the Railway will be required to perform certain work within the right-of-way of the Railway and on facilities Railway leases from Union Pacific Railroad Company ("Railway facilities"); and

WHEREAS, the parties hereto desire that the work to be performed by the Agency in connection with said construction be performed in accordance with plans and specifications to be prepared by the Agency; and

WHEREAS, the Agency is willing to undertake the construction of said project with Agency funds and the Railway is willing to consent to the execution of the said project upon the terms and conditions herein stated and not otherwise; and

WHEREAS, the parties hereto desire to contract with reference to the work to be done by each of them in connection therewith for the protection of Railway facilities and the payment of costs and expenses therein involved;

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

I

The Agency shall perform its work in accordance with detailed plans and specifications which shall be prepared by the Agency and submitted to the Railway for approval and approved by Railway when such plans and specifications are applicable or affect any Railway facilities, and no work pursuant to said plans and specifications shall be performed on Railway facilities prior to receipt of written notice to proceed given by Railway to the Agency engineer or their respective authorized representatives. Nothing provided in the Agreement with respect to said plans and specifications shall be construed or deemed to be ratification of or adoption by the Railway of said plans or specifications.

## **II**

The Agency and the Railway shall perform the various items of work as indicated in Oregon Department of Transportation Order Number 50673, entered March 25<sup>th</sup>, 2008, and the Amending Order, Number 50833, entered March 11<sup>th</sup>, 2010, both of which are attached hereto and made part of.

## **III**

All work herein provided for, to be done by the Agency or its contractors (“Contractor”) on the Railway facilities, shall be performed by the Agency or any Contractor in a matter satisfactory to the Railway and shall be performed at such time and in such a manner as not to interfere unnecessarily with the Railway facilities, including without limitation movement of trains or traffic upon the tracks of the Railway. The Agency or any Contractor shall use all care and precaution necessary to avoid accident, damage, or interference with the Railway facilities, including without limitation the Railway’s tracks or to the trains or traffic using its tracks, and notify the Railway in advance in accordance with Exhibit B hereto whenever it is about to perform work adjacent to the Railway facilities to enable the Railway to furnish flagging and such other protective services and devices as in Railway’s judgment is necessary, and the Agency shall reimburse the Railway for the cost thereof. The Railway will submit complete billing for flagging and their protective services and devices at the earliest practical date, and the Agency shall pay such bills promptly. Wherever the safeguarding of Railway facilities, including without limitation Railway’s trains or traffic of the Railway, is mentioned in this Agreement, it is intended to cover and include all users of the Railway facilities having permission for such use.

Attached hereto, marked as Exhibit “B”, and by this reference made a part hereof, is a Contractor’s Right of Entry Agreement, which the Agency and any Contractor and its subcontractors and agents performing work under this Agreement shall be required to enter into prior to commencing any work hereunder. In addition, prior to commencing any work hereunder, any Contractor and any of its subcontractors or agents shall be required to acknowledge and agree to the terms and conditions of this Agreement, including without limitation the exhibits and attachments referenced herein.

Reference in Exhibit “B” to “Contractor” shall be the party performing the work under this Agreement and reference in Exhibit “B” to “Railroad” shall mean “Railway” as defined hereunder. “Railroad Representative” in Exhibit “B” shall mean Railway’s Director of Finance, Carrie King.

## **IV**

In accordance with the provisions of 23CFR, part 646, which by this reference is incorporated in this Agreement, the Railway will receive no ascertainable net benefits from said project and, therefore, is not required to contribute to the cost of said project.

## **V**

The Agency, without expense to the Railway, shall secure from the owner or owners of that certain property lying adjacent to and outside of the Railway facilities all necessary easements, permits or other interest therein necessary for the occupation and use of said property during the construction, maintenance and operation of the roadway and its appurtenances.

## **VI**

It is understood that Exhibit "C", attached hereto and made part hereof, is a current estimate of the cost of the work to be performed by the Railway at Agency's expense and is for informational purposes only.

The Agency shall reimburse the Railway for all costs and expenses incurred by the Railway in connection with the acquisition of materials and performance of construction work as indicated in this Agreement. The Railway may submit progress bills to the Agency during the progress of the work included in this Agreement for the actual costs and expenses and the Agency shall pay such bills promptly.

After Railway has let for bid the work to be performed under this Agreement, Agency will have seven days to review and provide its approval or comments to Railway. Upon Agency's approval or expiration of the seven days, Railway will award and execute the construction contract after which construction may immediately commence.

It is further agreed that a final and complete billing of all actual incurred costs and expenses, ascertained in accordance with the provisions of 23 CFR (Code of Federal Regulations) part 646, and 23 CFR part 140, subpart 1, which by this reference are incorporated in this Agreement, shall be made at the earliest practical date. The Agency shall, upon presentation of final billing, promptly reimburse the Railway for such costs and expenses.

## **VII**

All contracts between the Agency and any Contractor, for the construction provided for, or maintenance work on the highway within the Railway facilities, including any easement area described herein or shown on exhibits attached hereto, will require the Contractor to protect and hold harmless the Railway and any other railroad company, including but not limited to the Railway, occupying or using the Railway facilities against all loss, liability and damage arising from activities of the Contractor, its forces or any of its subcontractors or agents, and will further provide that the Contractor and any of its subcontractors or agents shall carry insurance of kinds and amounts specified in Exhibit "B-1", which is attached hereto and made part hereof:

A certificate of insurance must be provided to the Railway by each Contractor, and any of its subcontractors or agents, prior to commencement of work by such Contractor, or subcontractor or agent.

If the Agency, any Contractor, subcontractors, or agents in the performance of the work herein provided for or by failure to do or perform anything for which it is responsible under the provision hereof, shall damage or destroy any property of the Railway, such damage or destruction shall be corrected by the Agency in the event any Contractor or such Contractor's insurance carriers fail to repair or restore the same.

## **VIII**

Upon completion of the project, the Agency, at its sole cost and expense, shall maintain all improvements, advanced warning signs, and other appurtenances, with the exception of the crossing which will be maintained by the Railway and the Agency as provided by law with the Railway, at its sole cost and expense, responsible for maintaining that portion of the crossing

lying between lines drawn perpendicular to the end of ties, and the Agency responsible for maintaining the remaining portion of the roadway at the crossing.

**IX**

Either party hereto may assign any receivable to them under this Agreement; provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this Agreement.

**X**

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 by reason of the construction of the Agency's project, the Railway, for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "D" attached hereto and made part hereof, in any such contract or agreement.

**XI**

In case said road shall at any time cease to be used as a public road, or shall by operation of law become vacated or abandoned, the rights and benefits to the Agency under this Agreement shall immediately cease, and Railway shall be entitled to repossess the land to which it has executed easements and permits to the Agency, and to use the same thereafter as if this Agreement had never been executed, without the necessity of any further legal proceedings.

**XII**

This Agreement shall inure to the benefit of and be binding on the parties hereto, their successors and assigns.

**XIII**

The Railway shall petition, on behalf of the Agency, for and in consideration of the sum to be announced by separate instrument, Union Pacific Railroad Company, for an easement for roadway purposes only upon and across the surface of the Railway facilities. The proposed easement description for said roadway is shown on Exhibit "E" attached hereto and made part hereof.

**XIV**

The Railway, its contractors if any, and all employers providing work, labor or materials under this Agreement, including any Agency Contractor, subcontractor or agents, are subject employers under the Oregon Workers Compensation law and shall comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. In other words, prevailing wages apply unless an exemption applies.

**XV**

The Railway hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of the Railway's knowledge, the Railway is not in violation of any of the tax laws described in ORS 305.380(4).

**XVI**

No person shall be employed to perform work under this Agreement for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, the Railway shall pay the employee at least time and a half pay or any other amounts required by law:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any on week  
When the work week is five consecutive days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week  
when the work week is four consecutive days, Monday through Friday; and
- (c) For all work performed an Saturday and on any legal holiday specified in ORS 279.334

This paragraph will not apply to the Railway's work under this Agreement if the Railway is currently a party to a collective bargaining agreement with any labor organization in which case such collective bargaining agreement shall govern such employee's pay.

**XV**

In the event of conflict between any of the exhibits or attachments hereto and this Agreement, this Agreement shall govern.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in the year first herein above written.

Approved as to Legal Form

\_\_\_\_\_

AGENCY:  
CITY OF SHERWOOD

by: \_\_\_\_\_

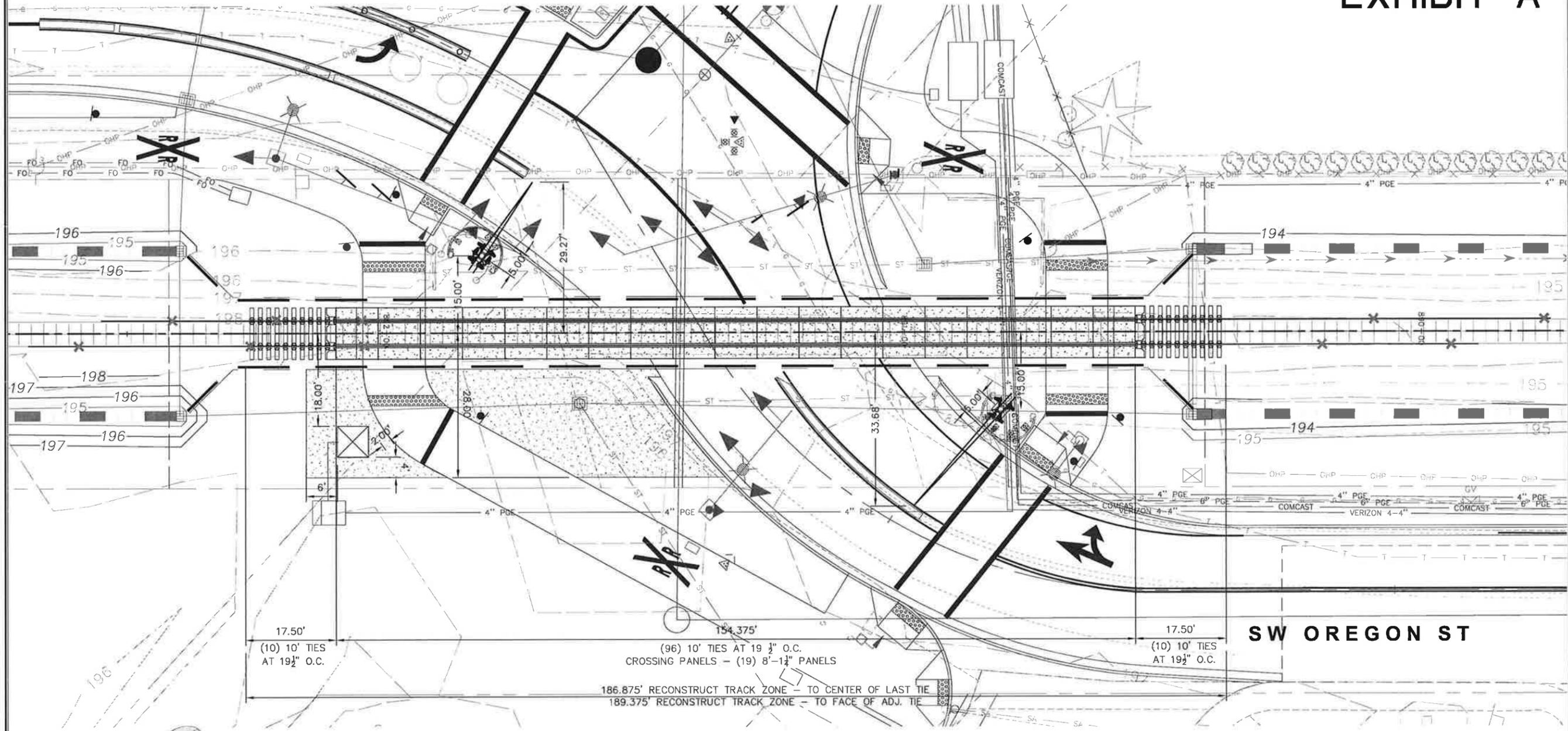
Its: \_\_\_\_\_

RAILWAY:  
PORTLAND & WESTERN RAILROAD, INC

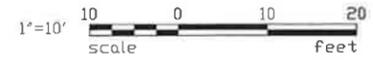
\_\_\_\_\_

Ronald G. Russ  
President

# EXHIBIT A



**1 TRACK CROSSING PLAN**  
 R4 1" = 10'-0"



- LEGEND**
- Q OF NEW TRACK ALIGNMENT
  - Q EXISTING ALIGNMENT
  - DITCH (D)
  - GRADE LINE (REF. SECTION) (GL)
  - ADS N-12 PERF PIPE (PP)
  - EXISTING FLOW LINE
  - TRACK NOTE
  - EXISTING TRACK JOINT \ WELD

**REDUCED DRAWINGS - DO NOT SCALE**

**Thomas W. Wiser, P.E.**  
 Consulting Railway Engineer

22750 SW Miami Drive  
 Tualatin, Oregon 97062  
 503 / 691-6095

**OREGON STREET**  
 SHERWOOD, OREGON

**TRACK CROSSING PLAN**

**PORTLAND & WESTERN RAILROAD**

650 HAWTHORNE AVE., SE  
 SALEM, OR 97301  
 (503) 365-7717

NO.	REVISION	DATE	ISSUED FOR

SCALE: - DATE: -  
 DESIGNED BY: TWW  
 JOB No: 08001  
 DWG. NO. EXH. A OF  
 REV.

CONTRACTOR ROE 021801  
Form Approved, VP-ENG

**EXHIBIT B**  
**CONTRACTOR RIGHT OF ENTRY AGREEMENT**

Section 1.        NOTICE OF COMMENCEMENT OF WORK-FLAGGING

Contractor agrees to notify the Railroad Representative at least 48 hours in advance of Contractor commencing its work and at least 24 hours in advance of proposed performance of any work by Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of notice the Railroad Representative will determine and inform Contractor whether a flagman will be present and whether Contractor need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2.        NO INTERFERENCE WITH RAILROAD'S OPERATION

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by Contractor at any time that would in any manner impair the safety of the Railroad's tracks, property and facilities. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 3.        MECHANIC'S LIENS

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. Contractor shall indemnify, defend and hold harmless the Railroad from and against all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 4.        PROTECTION OF FIBER OPTIC CABLE SYSTEMS

- a).        Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the Railroad at 1-800-336-9193 to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Contractor's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished.
  
- b).        In addition to other indemnity provisions in this Agreement Contractor shall indemnify, defend and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its contractors, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractors, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

CONTRACTOR ROE 021801  
Form Approved, VP-ENG

Section 5. COMPLIANCE WITH LAWS

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Contractor shall use only such methods as are consistent with safety, both as concerns Railroad, Contractor, and their respective directors, officers, agents and employees, and property of the Railroad and the public in general. Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by Contractor or its contractors, agents and/or employees to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, Contractor shall indemnify and hold the Railroad harmless for any such fine, penalty, cost or charge, including without limitation attorney's fees, court costs and expenses. Contractor further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge or expense to the Railroad.

Section 6. SAFETY INSTRUCTIONS

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. Contractor shall comply with Railroad's safety rules, which are by reference made a part of this Agreement, together with all ordinances, rules or regulations of any Federal, state or local governmental authority. As reinforcement and in furtherance of overall safety measures to be observed by Contractor (and not by way of limitation), the following special safety rules shall be followed:

- a). Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. Contractor shall have a non-delegable duty to control its employees and agents, including its subcontractors, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession, any alcoholic beverage, drug, narcotic or other substance that may inhibit the safe performance of work by the employee, agent or subcontractor as may be the case.
- b). The employees of Contractor shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective work boots and at least the following protective equipment
  - (1) Protective headgear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Contractor's or subcontractor's company logo or name;
  - (2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and
  - (3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.
- c). All heavy equipment provided or leased by Contractor shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Contractor's or any of its subcontractor's equipment is unsafe for use on the Railroad's right-of-way, Contractor, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

CONTRACTOR ROE 021801  
Form Approved, VP-ENG

- d). Contactor acknowledges that the track(s) of Railroad is/are active and that the Contractor and other invitees will use extreme care when utilizing the Railroad's right-of-way or working near said track(s) in order to prevent accidents and injuries. Said extreme care shall include, but not be limited to, stopping, looking and listening for the approach of any train, rail car, or on-track equipment. Contractor further agrees that when utilizing the Railroad's right-of-way, no equipment or vehicle shall be stopped on any track, or within twenty-five (25) feet of the center line of any track and that no equipment, vehicle or workmen shall attempt to utilize the Railroad's right-of-way when any train, rail car, or on-track equipment is approaching. Contractor and other invitees shall not temporarily or permanently block any sight view area of the railroad or the Railroad's right-of-way, by parking or allowing parking of equipment or vehicles, by stockpiling materials, or by any other means. Contractor shall not at any time permanently block the track or the Railroad's right-of-way or foul the Railroad's right-of-way in any way, including but not limited to causing the buildup of mud or ice on or around the rails or flange ways which might prevent the safe passage of any train or rail mounted maintenance or inspection equipment. Contractor shall not use, nor permit to be used, any part of Railroad's property within fifty (50) feet of any track of Railroad for parking or storage. The Railroad's right-of-way shall be used by Contractor and any other invitee only during daylight hours.

Section 7. INDEMNITY

- a). As used in this Section, "Railroad" includes its officers, agents, and employees and other railroad companies using the Railroad's property at or near the location of Contractor's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents and employees, Contractor's officers, agents and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Contractor's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in Railroad's care or custody).
- b). As a major inducement and in consideration of the license and permission herein granted, Contractor agrees to indemnify, defend and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of this Agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this Agreement.
- c). In addition to any other insurance coverages required under this Agreement, the Contractor shall maintain whatever insurance coverage is necessary to adequately underwrite its general and contractual liability under the terms of this Agreement. Furnishing of insurance by the Contractor shall not limit the Contractor's liability under this Agreement, but shall be additional security therefore. The fact that insurance is obtained by you or by Railroad on your behalf will not be deemed to release or diminish your liability, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from you or any third party will not be limited by the amount of the required insurance coverage. Contractor shall not have or seek recourse against Railroad for, and shall waive, any claim or cause of action for alleged Loss.

Section 8. RESTORATION OF PROPERTY

In the event the Railroad authorizes Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same was in before such fence was taken down or such other property was moved or disturbed.

Section 9. WAIVER OF BREACH

The waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 10. ASSIGNMENT – SUBCONTRACTING

Contractor shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives Contractor permission to all or any portion of the work herein described, Contractor is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

Section 11. PREVAILING WAGES

Contractor acknowledges and agrees that any work done this Agreement, whether by employees, agents or subcontractors of Contractor, is governed by Oregon prevailing wage laws, rules and regulations.

Contractor: \_\_\_\_\_  
(full legal name)

By: \_\_\_\_\_  
Name: \_\_\_\_\_, Authorized Representative  
Title:

**EXHIBIT B-1**  
**Contract Insurance Requirements**

1.01 The Contractor shall, at its own cost and expense, prior to entry onto the Property or the commencement of any work pursuant to the Agreement, procure and thereafter maintain for the duration of the Agreement the following insurance coverage:

- A. The Contractor shall maintain Public Liability or Commercial General Liability Insurance (“CGL”), including Contractual Liability Coverage, covering all liabilities assumed by the Contractor under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Five Million Dollars (\$5,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Ten Million Dollars (\$10,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a Waiver of Subrogation in favor of the Railroad and shall name the Railroad as Additional Insured. An Umbrella policy may be utilized to satisfy the required limits of liability under this section.
- B. The Contractor shall maintain Commercial Automobile Insurance for all owned, non-owned or hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) for Bodily Injury and Property Damage Liability. Such policy shall be endorsed to provide a Waiver of Subrogation in favor of the Railroad and shall name the Railroad as Additional Insured. If hauling hazardous materials, such Policy is to be endorsed with the MCS – 90 endorsement as well as CA 9948 Pollution Liability – Broadened Pollution for Covered Autos.
- C. The Contractor shall maintain Statutory Workers’ Compensation and Employers’ Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Each Employee. Such policy shall be endorsed to provide a Waiver of Subrogation in favor of the Railroad.
- D. If required by Railroad, the Contractor shall maintain Railroad Protective Liability Insurance written in favor of Railroad with limits of Five Million Dollars (\$5,000,000) each occurrence and Ten Million Dollars (\$10,000,000) aggregate limit covering all operations within 50 feet of railroad track.
- E. The Contractor shall maintain Pollution Legal Liability Insurance with minimum limits of \$5,000,000 per occurrence covering all operations of Contractor. Such policy shall be endorsed to provide a Waiver of Subrogation in favor of the Railroad.
- F. The Contractor shall maintain Professional Liability Insurance with minimum limits of \$1,000,000 per occurrence covering all operations of Contractor.

- G. If subcontractors are utilized by the Contractor, Contractor shall furnish evidence that, with respect to the operations performed by subcontractors, such subcontractors are in compliance with all requirements of this Section 1.
- H. All railroad exclusions shall be removed by policy endorsements.

1.02 The insurance specified in this Agreement must be effected under form policies underwritten by insurers licensed in the state where the work is to be performed, and carry a minimum Best's rating of "A-" and size "Class VI" or better. The Railroad reserves the right to reject any insurance coverage provided by an insurer that is rated less than the rating specified in this Section 1.

1.03 All coverages shall be primary and non-contributory to any insurance coverage maintained by the Railroad.

1.04 All insurance policies shall be endorsed to provide the Railroad with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

1.05 Contractor shall furnish, to Railroad, certificates of insurance evidencing the insurance coverages, terms and conditions required and specified in this Agreement, at least ten days prior to commencement of any activities on or about the property. Said certificates should reference this Agreement by date and shall be furnished to the Railroad at the following address, or such other address as the Railroad may hereafter specify:

Portland & Western Railroad, Inc.  
200 Hawthorne Ave. SE, Suite C-320  
Salem, Oregon 97301

1.06 If any policies providing the required coverage are written on a Claims-Made basis, the following shall apply:

1. The retroactive date shall be prior to the commencement of the work,
2. The Contractor shall maintain such policies on a continuous basis, and
3. If there is a change in insurer or policies are cancelled or not renewed, the Contractor shall purchase an extended reporting period of not less than three (3) years after the Completion Date.

1.07 Contractor shall arrange for adequate time for reporting of any loss under this Agreement.

1.08 Furnishing of Insurance by the Contractor shall not limit the Contractor's liability under this Agreement, but shall be additional security therefore. The fact that insurance is obtained by you or by Railroad on your behalf will not be deemed to release or diminish your liability, including, without limitation, liability under the indemnity provisions of this

Agreement. Damages recoverable by Railroad from you or any third party will not be limited by the amount of the required insurance coverage.

1.09 The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

1.10 Failure to provide the required insurance coverage or endorsement (including contractual liability endorsement) or adequate reporting time shall be at the Contractor's sole risk and Railroad, in its sole discretion, may terminate this Agreement for such failure.

1.11 All policies required above (except Statutory Workers' Compensation and Employers' Liability Insurance and Professional Liability Insurance) must include the Railroad as "Additional Insured" using ISO Additional Insured Endorsement CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage) which must be stated on the certificate of insurance. The coverage provided to the Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CG 20 48, provide coverage for the Company's negligence whether partial, active or passive, and shall not be limited by your liability under this Agreement.

1.12 Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (i) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Agreement; or (ii) all punitive damages are prohibited by all states in which this Agreement will be performed.



Exhibit C

Estimate of Expense

Railroad: Portland & Western Railroad  
District: Westside District  
Project: Oregon Street, Sherwood  
Station: Sherwood  
08PWR10R

Construction Engineering / Observations Wiser Engineering	\$20,000.00
P&W Railroad - Administration:	\$ 5,000.00
Crossing Construction Estimate (see attached):	\$ 390,512.13
Flagging:	\$ 18,000.00
Contingency:	\$ 43,351.21
	<hr/> <hr/>
	\$476,863.34

## EXHIBIT "D"

### Appendix A

#### Nondiscrimination Provisions of Title VI of the Civil Rights Act of 1964.

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will comply with comply with the Regulation of the Department of Transportation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national procurements of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment Appendixes "A", "B" and "C".
- (3) Solicitations for Subcontracts: Including Procurements of Materials And Equipment: In all solicitations either by competitive under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.
- (4) Information and Reports: The Contractor will provide all information and reports required by The Regulations of orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sate Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Highway Department or the Federal Highway Administration as appropriate and shall set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- (A) withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - (B) cancellation, termination, or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The Contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, order or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State to enter in such litigation to protect the interest of the State, and in addition, the Contractor may request the United States to enter into such litigations to protect the interests of the United States.

#### PROHIBITION OF DISCRIMINATION ON THE BASIS OF SEX

“S 324”, Prohibition of discrimination on the basis of sex.

No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under Title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.”



**Exhibit "E"**  
Legal Description  
Permanent Easement – Southern Pacific Transportation Company

Permanent Easement

Being a strip of land located in the North One-Half of Section 32, Township 2 South, Range 1 West, Willamette Meridian, City of Sherwood, Washington County, Oregon and being a portion of that property conveyed to "Southern Pacific Transportation Company", by deed document recorded in Book "Q", Page 520 of the Washington County Deed Records, and being 100.00 feet on each side of the following described centerline:

Commencing at a Brass Cap marking the North One-Quarter Corner of Section 32, Township 2 South, Range 1 West, Willamette Meridian;

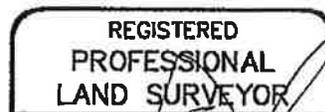
Thence along the Center line of said Section, South 00°35'26" East, 597.57 feet to the Northwest Right-of-Way line of Southern Pacific Transportation Company, by deed document recorded in Book "Q", Page 520 of the Washington County Deed Records;

Thence along said Northwesterly Right-of-Way line, North 47°15'08" East, 14.68 feet to the True Point of Beginning of the centerline to be described;

Thence leaving said Northwesterly Right-of-Way line, South 42°44'52" East, when measured perpendicular to said Right-of-Way line, 60.00 feet to the Southeast Right-of-Way line of said parcel, and the point of terminus.

The side lines of said 200.00 foot easement to be extended or shortened to meet at the Northwesterly and Southeasterly Right-of Way lines of said Southern Pacific Transportation Company parcel.

Containing 0.28 acres more or less.



RENEWAL DATE: 7-01-11

# EXHIBIT "F"

LOCATED IN THE N 1/2 OF SECTION 32, TOWNSHIP 2  
 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
 WASHINGTON COUNTY, OR

LINE TABLE		
LINE	LENGTH	BEARING
L1	14.68'	N47°15'08"E
L2	60.00'	S42°44'52"E

PERMANENT  
 EASEMENT AREA



= 0.28 ACRES±



REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

OREGON  
 JULY 16, 1982  
 TERRY GOODMAN  
 1989

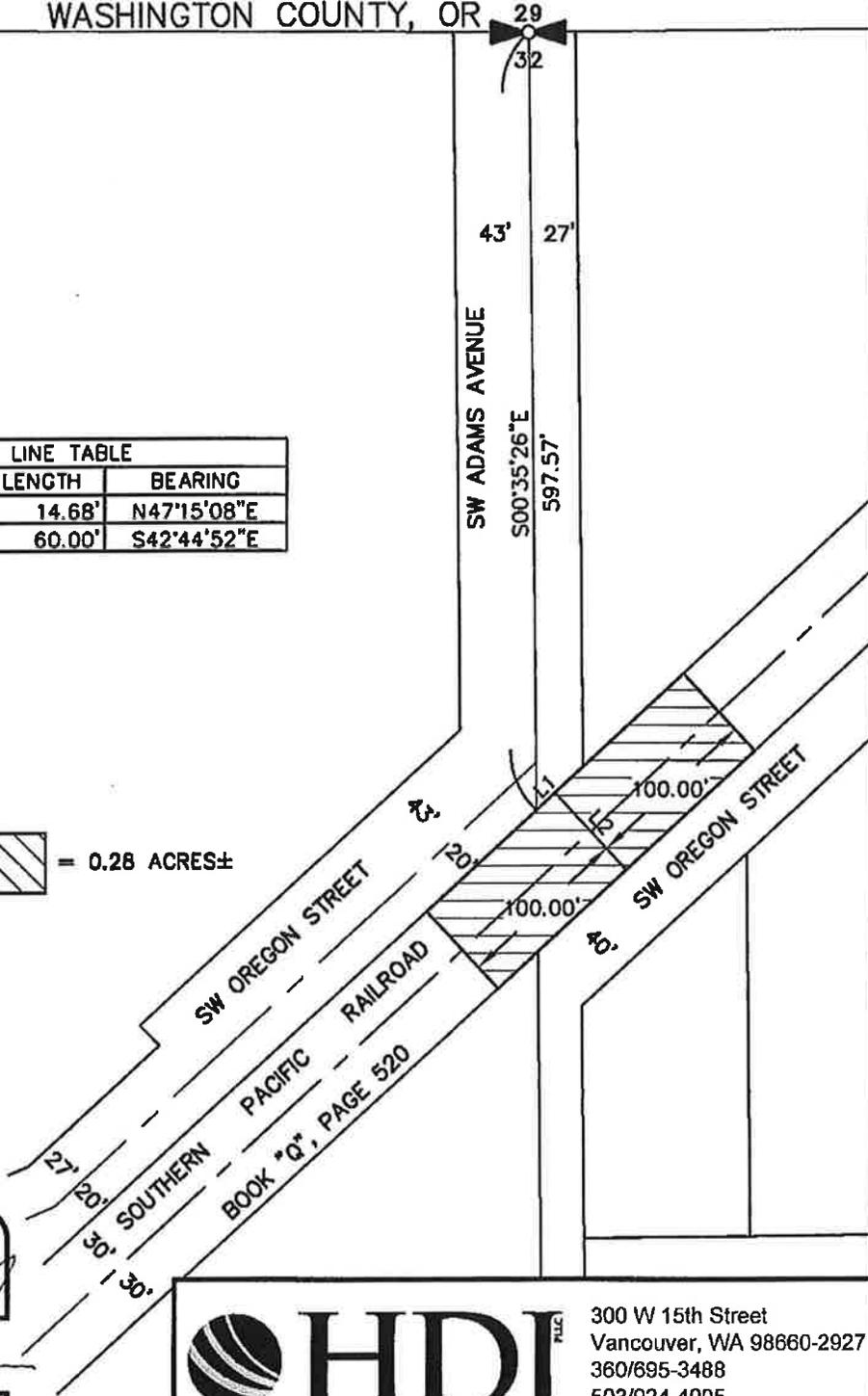
RENEWAL DATE: 7-01-11



300 W 15th Street  
 Vancouver, WA 98660-2927  
 360/695-3488  
 503/924-4005  
 360/695-8767 fax

engineers landscape architects planners surveyors

DRAWN BY: MCW	SCALE: 1"=100'	DATE: 09/01/2010
CHECKED BY: TLG	JOB NO.: 2336-00	SHEET 1 OF 1



ORDER NO. 50833

ENTERED 3/11/2010

ODOT CROSSING NO. P-757.90  
U.S. DOT NO. 754216N

**BEFORE THE OREGON DEPARTMENT  
OF TRANSPORTATION**

**RX 1454**

In the Matter of the Alteration of the Railroad-Highway )  
Grade Crossing at SW Oregon Street and UNION )  
PACIFIC RAILROAD COMPANY, a Delaware Corporation, )  
leased to PORTLAND & WESTERN RAILROAD (PNWR), )  
INC., West Side District, in Sherwood, Washington County, )  
Oregon. )

**AMENDING  
ORDER**

The Department entered Order No. 50673 on March 25, 2008, authorizing alteration of the subject crossing. Order No. 50673 specified that construction of the crossing shall be completed within two years of the entered date of the Order.

By letter dated February 19, 2010, City requested an extension of the construction deadline set forth in Order No. 50673. The recent economic downturn has delayed the availability of City's project funding and the completion of the requisite storm water facilities in the project area. City is now able to move forward with construction bidding and complete the construction contract with PNWR, but will be unable to complete construction by March 25, 2010. Therefore, City requests a one-year extension of project completion deadline until March 25, 2011.

Rail Division staff of the Department has investigated the request for extension. No party has objected to the request for extension. Therefore, Order No. 50673 should be amended as follows:

IT IS THEREFORE ORDERED that:

1. Paragraph 1 of Order No. 50673 is amended to read:

The authority to construct the subject grade crossing is granted. Construction of the crossing shall be completed on or before March 25, 2011. Otherwise, the authority expires on that date.

ORDER NO. 50833

All other terms and provisions of Order No. 50673, not in conflict with this Order,  
shall remain in full effect.

Made, entered, and effective

March 11, 2011

Kelly Taylor

Kelly Taylor  
Rail Division Administrator

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**OREGON DEPARTMENT OF TRANSPORTATION**

**CERTIFICATE OF SERVICE**

**RX 1454**

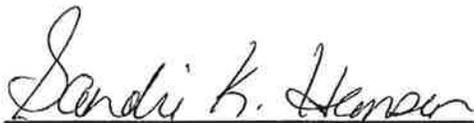
I, Sandie K. Hansen, Administrative Support of the Rail Division for the Department of Transportation of the State of Oregon, hereby certify that on the 11<sup>th</sup> day of March 2010, I served copies of Amending Order No. 50833 upon the appropriate parties listed below via regular mail at Salem, Oregon, with postage prepaid and addressed as their addresses appear in the records of the Department of Transportation.

**Applicant**

Jason Waters  
City of Sherwood  
22560 SW Pine Street  
Sherwood OR 97140

**Parties**

Ron Russ  
Portland & Western Railroad, Inc.  
200 Hawthorne Ave SE STE. C-320  
Salem OR 97301



Sandie K. Hansen, Administrative Support  
Oregon Department of Transportation  
Rail Division



# Oregon

Theodore R. Kulongoski, Governor

## Department of Transportation

Rail Division  
555 13th St NE Ste 3  
Salem, OR 97301-4179  
(503) 986-4321  
Fax: (503) 986-3183

March 26, 2008

File Code:

TO ALL PARTIES

**RX 1454: In the Matter of the Alteration of the Railroad-Highway Grade Crossing at SW Oregon Street and UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation, leased to PORTLAND & WESTERN RAILROAD (PNWR), INC., West Side District, in Sherwood, Washington County, Oregon.**

Enclosed is your copy of final Order No. 50673, granting the legal authority to construct, alter or close a public crossing in the above-cited matter. This Order is a compliance document, the terms of which are binding upon the affected road authority(s) and railroad(s) and enforceable, if necessary, in a court of law.

All parties are requested to distribute copies of this Order to all persons in their agency or company who are involved in the project as supervisors, contractors and quality assurance inspectors. If the project supervisor should change, please assure that a copy of this Order, and the importance of its provisions, is provided to the new project manager and inspectors. Please monitor the construction to ensure ongoing compliance with the Order.

Order No. 50673 requires that all parties provide written notice of completion of the project to the Rail Division. Upon receipt of this notice, Rail Division Staff will carefully inspect the project for compliance with the Order. Any deficiency or non-compliance item(s) found by Staff will be sent to the party responsible for installation/maintenance of that item. Rail Division does not consider a project complete until it passes final inspection for compliance with the Order.

For most projects, the applicant has the major burden of quality control as they are bearing the costs of construction, installation of traffic control devices, etc. Parties are welcome to invite me to the pre-construction meeting, or call me with questions.

I wish you a successful project completion, in hopes that it will promote the safety of our citizens at railroad-highway crossings.

Michael "Swede" Hays  
Railroad Compliance Specialist

Enclosure: Copy of Order No. 50673

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ORDER NO. 50673

ENTERED 03/25/2008

ODOT CROSSING NO. P-757.90  
U.S. DOT NO. 754216N

**BEFORE THE OREGON DEPARTMENT  
OF TRANSPORTATION**

**RX 1454**

In the Matter of the Alteration of the Railroad-Highway )  
Grade Crossing at SW Oregon Street and UNION )  
PACIFIC RAILROAD COMPANY, a Delaware )  
Corporation, leased to PORTLAND & WESTERN )  
RAILROAD (PNWR), INC., West Side District, in )  
Sherwood, Washington County, Oregon. )

**ORDER**

On December 18, 2007, City of Sherwood, made application under ORS 824.206 seeking authority to alter the subject grade crossing. The affected railroad is PNWR. The public authority in interest is the applicant.

Rail Division staff has investigated the application. On February 19, 2008, staff served the application and a Proposed Final Order (PFO) for all parties to review and acknowledge their agreement with its terms. No objections to the PFO were received from any party. All parties in this matter have agreed that the proposed crossing alterations are required by the public safety, necessity, convenience and general welfare. Therefore, under ORS 824.214, the Department may enter this Order without hearing.

The Appendix to this Order depicts the proposed realignment and improvements to the SW Oregon Street/SW Adams Avenue intersection adjacent to the grade crossing. The realigned roadway will intersect the tracks at an angle of  $\approx 58$  degrees. The average daily traffic volume at the reconfigured crossing is  $\approx 9,000$  vehicles. There is a daily average of one freight train movement over the crossing at a maximum authorized speed of 25 miles per hour (mph). There have been no reported train-vehicle collisions at the crossing within the past 10 years.

As part of the project, applicant proposes to construct a multi-use path, raised medians, and designated pedestrian crosswalks, depicted in the Appendix to this Order. New flashing-light signals and automatic gates as depicted in the Appendix to this Order, Sheet 1, will be installed at the crossing to accommodate the realigned roadway.

New vehicle traffic signals (VTS) will be installed at the intersection SW Oregon Street and SW Adams Avenue. The VTS will be interconnected with the new crossing signals, as depicted in the Appendix to this Order. The interconnection will provide train preemption of traffic signal phases and shall operate such that when an approaching train is detected, all conflicting traffic moves will receive a RED signal indication.

ORDER NO. 50673

Applicant further proposes to install standard guardrail adjacent to the new crossing signals, along with new pedestrian crosswalk markings in lieu of stop clearance lines. A ground-mounted STOP HERE ON RED (R10-6) sign with attached High Level Warning device flag kit will be installed in the NE quadrant of the crossing as depicted in the Appendix to this Order. One NO TURN ON RED (R10-11a) sign will be mounted on the VTS cantilever arm facing westbound Oregon Street traffic.

From the foregoing, the Department finds that the requested crossing alterations are required by the public safety, necessity, convenience and general welfare. The application should be granted upon the following terms.

IT IS THEREFORE ORDERED that:

1. The authority to alter the subject grade crossing is granted. Alterations shall be completed within two years from the entered date of this Order. No authority to establish a Quiet Zone is granted by this Order.
2. Applicant (City of Sherwood) shall:
  - a. Construct and maintain that portion of the crossing lying outside lines drawn perpendicular to the end of ties to accommodate the roadway configuration and multi-use path, as depicted in the Appendix to this Order, and bear all the costs. The roadway approaches shall comply with OAR 741-120-0020 (1), (2), (3), and (4).
  - b. Furnish, install and maintain VTS at the intersection of SW Oregon Street and SW Adams Avenue to accommodate the train preemption operations described above in the body of this Order, and bear all the costs. During train preemption, the VTS shall operate as depicted in the Appendix to this Order, Sheet 3.
  - c. Furnish, install and maintain an interconnection between the VTS and ordered crossing signals, and bear all the costs. The interconnection shall provide train preemption of the normal operation of the traffic signals, as described above in the body of this Order.
  - d. Furnish, install and maintain standard guardrail (urban installation) according to OAR 741-110-0030 (6) adjacent to the ordered automatic signals at the crossing, and bear all the costs.
  - e. Furnish, install and maintain one ground-mounted STOP HERE ON RED (R10-6) sign with attached High Level Warning Device flag kit, and bear all the costs. The sign shall be mounted at the crossing, located in the NE quadrant of the crossing, as depicted in the Appendix to this Order, Sheet 2. The sign shall not obstruct approaching motorists' view of the ordered automatic signals.
  - f. Furnish, install and maintain one NO TURN ON RED (R10-11a) sign, mounted on the VTS cantilever arm and aimed at westbound traffic on SW Oregon Street, as

ORDER NO. 50673

depicted in the Appendix to this Order, Sheet 2, and bear all the costs.

- g. Furnish, install and maintain one side road advance warning (W10-4) sign facing southbound SW Adams traffic and three advance warning pavement markings (AWPM) on the multi-use path approaches to the crossing, according to OAR 741-110-0030 (5) (a) and 741-110-0030 (5) (d), respectively, and bear all the costs. The W10-4 sign and AWPM's shall be located as depicted in the Appendix to this Order, Sheet 1.
  - h. Furnish, install and maintain four bicycle warning (OBW8-19L and -19R) signs on the multi-use path approaches to the crossing, located as depicted in the Appendix to this Order, Sheet 2, and bear all the costs.
  - i. Furnish, install and maintain three standard non-mountable curb medians, located as depicted in the Appendix to this Order, Sheet 2, and bear all the costs.
  - j. Furnish, install and maintain one YIELD (R1-2) sign, located as depicted in the Appendix to this Order, Sheet 1, and bear all the costs.
  - k. Bear all the cost of work items listed in paragraphs 3.a., 3.b., 3.c., and 3.d., below.
3. Portland & Western Railroad shall:
- a. Subject to reimbursement by applicant, construct that portion of the crossing lying between lines drawn perpendicular to the end of ties of each track to accommodate the roadway configuration and multi-use path as depicted in the Appendix to this Order.
  - b. Subject to reimbursement by applicant, furnish and install two flashing-light signals, and two automatic gate signals at the crossing. The signals shall be located as depicted in the Appendix to this Order, Sheet 2. The signals shall be activated according to OAR 741-110-0070 (1) and (2).
  - c. Subject to reimbursement by applicant, furnish and install additional flashing-light signals aimed at southbound traffic on SW Adams Avenue, and located as depicted in the Appendix to this Order, Sheet 2.
  - d. Subject to reimbursement by applicant, furnish and install the interface box, equipped with contact terminals and attached to the crossing signal house, and interconnection circuitry on the railroad side of the contact terminals to facilitate the traffic signal preemption as described above.
  - e. Maintain the ordered automatic signals and circuitry, traffic signal interconnection circuitry on the railroad side of the contact terminals in the interface box, that portion of the crossing lying between lines drawn perpendicular to the end of ties, and bear all the costs.

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- f. Notify the Rail Division of the Department in writing or by facsimile transmission not less than five working days prior to the date that the ordered automatic signals will be activated and placed in service.
4. Each party shall notify the Rail Division of the Department in writing upon completion of its portion of the project.

All previous Orders of the Public Utility Commission or the Department relating to the subject grade crossing, not in conflict with this Order, remain in full effect.

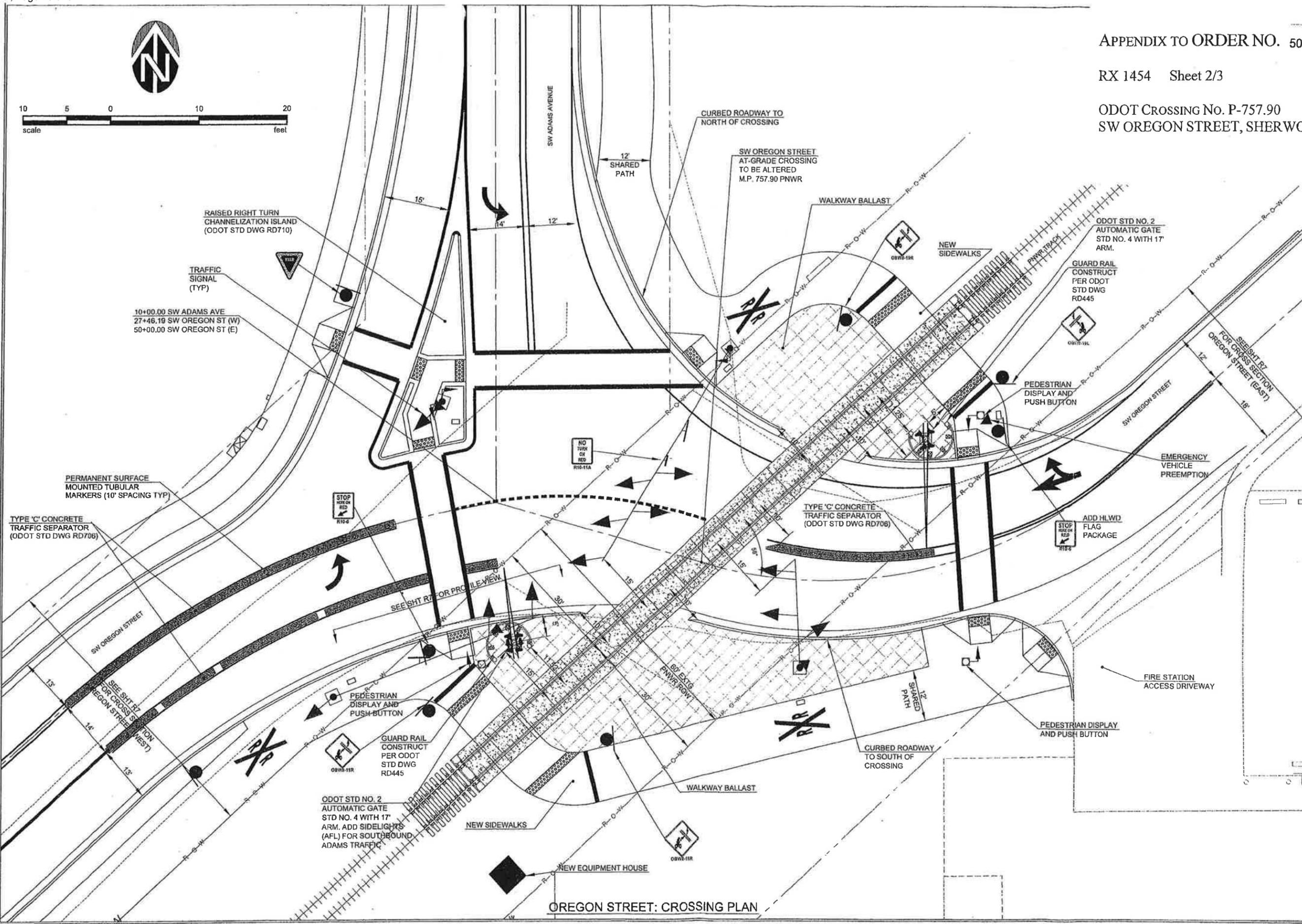
Made, entered, and effective

March 25, 2011

Kelly Taylor  
Kelly Taylor  
Rail Division Administrator

G:\Wg\_rail\Orders\RX 1454 ord Oregon St, Sherwood.doc





CITY OF SHERWOOD  
 SW ADAMS AVENUE/SW OREGON STREET IMPROVEMENT PROJECT  
 OREGON STREET: CROSSING PLAN

CITY OF SHERWOOD  
 22560 SW PINE STREET  
 SHERWOOD, OR 97140  
 T(503) 925-2309  
 F(503) 625-0629

NO.	REVISION	DATE	ISSUED FOR

SCALE: 3/16"=1'-0"  
 DESIGNED BY: J11108  
 JOB No: P-757.90  
 DWG No: R4

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**DEPARTMENT OF TRANSPORTATION**

**CERTIFICATE OF SERVICE**

**RX 1454**

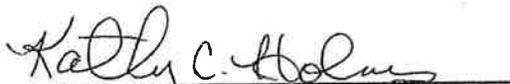
I, Kathy C. Holmes, Executive Assistant of the Rail Division for the Department of Transportation of the State of Oregon, hereby certify that on the 26<sup>th</sup> day of March, 2008, I served copies of Staff's Service Letter and Final Order No. 50673 upon the appropriate parties listed below via regular mail at Salem, Oregon, with postage prepaid and addressed as their addresses appear in the records of the Department of Transportation.

**Applicant**

Tom Pessemier  
City of Sherwood  
22560 SW Pine Street  
Sherwood OR 97140

**Parties**

Dale A. Hansen, VP Engineering  
Portland & Western Railroad Co  
650 Hawthorne AVE SE STE 220  
Salem OR

  
Kathy C. Holmes, Executive Assistant  
Oregon Department of Transportation  
Rail Division

Description	Qty	Unit	Unit Cost	Total Cost
<b>Oregon Street, Sherwood, Oregon</b>				
a Mobilization	= 1	LS	\$20,000.00	\$20,000.00
b Erosion Control - 500 lf of silt fencing	= 1	LS	\$2,000.00	\$2,000.00
c Demolish & Remove existing crossing - Misc. Debris removal	= 1 = 1	LS LS	\$5,000.00 \$1,500.00	\$5,000.00 \$1,500.00
d Earthwork Cut - includes removal from the site - Overexcavation 1.5' and backfill w/ 4" minus - Ditch east - Ditch west	= 260 = 135 = 125 = 125	CY CY CY CY	\$123.00 \$47.00 \$18.00 \$17.00	\$31,980.00 \$6,345.00 \$2,250.00 \$2,125.00
e 136RE New rail, 80' lengths (beyond limits of crossing) 115RE New rail, 80' lengths (beyond limits of crossing)	= 54.0 = 80.0	LF LF	\$102.00 \$102.00	\$5,508.00 \$8,160.00
f Standard Approach Welds, Comp Welds	= 8	EA	\$600.00	\$4,800.00
g Reconstruct Track Additional 9'-0" ties	= 173.00 = 20	TF EA	\$286.00 \$75.00	\$49,478.00 \$1,500.00
h Raise Existing Track ( Includes ?? tie renewal) Max raise of ?" @ h.p.	= 931	LF	\$28.00	\$26,068.00
i Surface, Line & Dress	= 200	TF	\$2.00	\$400.00
j Furnish & relay 136RE #1 Relay CWR	= 0.0	TF	\$93.00	\$0.00
k Omega Concrete Crossing Panels, complete w/ labor	= 73.13	0	\$225.00	\$16,453.13
l Install Crossing Signal including the following: - Two (2) ODOT No. 2 Flashing Light Signal - Two (2) ODOT No. 4 Automatic Gate Signal - Conduit (??' conduit) - Control Box	= 1	LS	\$175,000.00	\$175,000.00
m Underground Power	= 1	LS	\$12,000.00	\$12,000.00

Portland & Western Railroad Sherwood Downtown Crossings - Preliminary Opinion of Probable Cost

Description	Qty	Unit	Unit Cost	Total Cost
n Signal Support	= 1	LS	\$2,500.00	\$2,500.00
o Surveying - Construction	= 1	LS	\$4,500.00	\$4,500.00
p Hydro Seeding	= 1	LS	\$3,000.00	\$3,000.00
q Vibratory Compact Crib, Shoulders	= 108.9	TF	\$50.00	\$5,445.00
r Performance and Payment Bond	= 1	LS	\$2,500.00	\$2,500.00
s Railroad Protective Insurance	= 1	LS	\$2,000.00	\$2,000.00
<b>t Total Rail Contractor Construction Cost:</b>				<b>\$390,512.13</b>
<b>Additional Costs - P&amp;WRR</b>				
u Railroad Inspection, Flagging & Engineering	= 200	HR	\$90.00	\$18,000.00
v PNWR Railroad Office Engineering	= 1	LS	\$5,000.00	\$5,000.00
w Surveying - As required for Civil Engineering	= 1	LS	N/A	\$0.00
x Construction Observation	= 1	LS	\$20,000.00	\$20,000.00
y Signal Engineering	= 1	LS	N/A	\$0.00
<b>z Total Additional Construction Cost:</b>				<b>\$43,000.00</b>
<b>aa Total Construction Cost:</b>				<b>\$433,512.13</b>
<b>ab Contingency:</b>	= 10.00%	%	\$43,351.21	\$43,351.21
<b>ac Total Construction Cost:</b>				<b>\$476,863.34</b>