

**RESOLUTION NO. 1485
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING AGREEMENT BETWEEN CITY OF PRINEVILLE
AND PRINEVILLE CAMPUS, LLC**

Whereas, The City of Prineville (“City”) is the owner and operator of the Prineville Railroad, which has railroad track that has traditionally serviced property located within the City that is currently owned by W. Scott, LLC and operated by Prineville Campus, LLC (“Property”).

Whereas, railroad track servicing the Property, (“Track”), requires improvements to meet Class II level requirements as defined by the Federal Railroad Administration.

Whereas, Prineville Campus, LLC desires to make improvements to the Track to meet the Class II level requirement not to exceed ONE-HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00).

Whereas, City is willing to allow Prineville Campus, LLC to make the improvements and to reimburse Prineville Campus, LLC for improvements made to the Track in an amount not to exceed ONE-HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00) pursuant to revenue produced.

Whereas, City staff has prepared the Agreement (“Agreement”), attached hereto and incorporated herein; and

Whereas, City staff believes it is in the best interest of the City to approve and execute the Agreement;

Now, Therefore, the City of Prineville resolves that the Agreement attached to this Resolution is hereby approved and that the Mayor is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this 27th day of April, 2021.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

**Agreement
between
City of Prineville and Prineville Campus, LLC**

This Agreement (“Agreement”) is made and entered into of the date last written below, by and between the **City of Prineville**, Oregon, an Oregon municipal corporation (“City”) and **Prineville Campus, LLC, a foreign limited liability company authorized within the State of Oregon** (“PVL”); each of the City and PVL are “Party” and together, the “Parties.”

RECITALS

- A. PVL operates property located within City of Prineville, Crook County Oregon, described as Map and Taxlot Numbers: 14163200-00301; 14163200-00302; 14163200-00303; 141632BA02000; and 141629CC01400 (collectively “Prineville Campus”).
- B. The City is the owner and operator of the City of Prineville Railroad (“Railroad”). Railroad has track that services Prineville Campus as depicted on Exhibit A and incorporated herein, hereinafter “track.”
- C. Railroad traditionally serviced the Prineville Campus at the time that the Property operated as a Mill; however, due to the Mill becoming operational, the track was unused and not maintained by the Railroad and will require certain improvements to become operational.
- D. In order to become operational, the track must meet Class II level requirements as defined by Federal Railroad Administration.
- E. PVL desires to make improvements to the Track to meet the Class II level requirement not to exceed ONE-HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00).
- F. City is willing to reimburse PVL for improvements made to the Track in an amount not to exceed ONE-HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00) pursuant to revenue produced.

NOW, THEREFORE, for the consideration set forth below, and the mutual covenants and agreements contained herein, including the recitals which are incorporated herein by reference, which are relied upon by Parties and which constitute part and parcel of this Agreement; and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged by the Parties, the City and PVL hereby agree as follows:

- 1. Performance.** PVL hereby agrees to make improvements to the track to meet Class II Level Requirements.
- 2. Reimbursement.** City hereby agrees to reimburse PVL up to ONE-HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00). This reimbursement shall be based on fifty percent (50%) of the interline rates of each car originating or terminating at the Prineville

Campus. The current interline rates of both Union Pacific and BNSF are attached as Exhibit B and incorporated herein. Reimbursements shall be provided on a quarterly basis.

3. City's Responsibilities. City shall fund any signalization required as result of the improvements. City shall also match \$150,000.00 in supplies that include the switch ties, crossing panels, Lamonta signal reactivations, and in-house labor for installing said items.

4. Term. This Agreement shall terminate six (6) years from the date last written below.

5. Ownership. All improvements shall become the property of City.

6. Indemnification. PVL agrees to indemnify, defend and hold City, its officers, employees and agents harmless from and against any liability, claims, actions, causes of action or demands arising out of the design, and construction of the track.

7. Default; Remedy.

7.1 Default/Cure. The following shall constitute defaults on the part of a Party:

7.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within sixty (60) days after the other Party has given notice specifying the breach; provided that if the non-breaching Party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching Party shall allow the breaching Party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time; or

7.1.2 Any assignment by a Party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a Party.

7.2 Remedies. Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach of the other parties, including, without limitation, the right to compel specific performance.

8. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual consent of the Parties and their successors in interest.

9. Miscellaneous Provisions.

9.1 Notices. A notice or communication under this Agreement by either party shall be dispatched by overnight delivery or registered or certified mail, postage prepaid, return receipt requested, and

9.1.1 In the case of a notice or communication to PVL, address as follows:

Charles Bauman
1948 N. Main Street
Prineville, OR 97754
charles@pvlcampus.com

In the case of a notice or communication to the City, addressed as follows:

City of Prineville Railroad
3840 Bus Evans Road
Prineville, OR 97754
mwiederholt@cityofprineville.com

or addressed in such other way in respect to a party as that party may, from time to time, designate in writing dispatched as provided in this section.

9.2 Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.3 Waivers. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the party making the waiver. No waiver by City or PVL of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.4 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceeding in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

9.5 Time of the Essence. Time is of the essence of this Agreement.

9.6 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

9.7 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on a Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

9.8 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.9 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

9.10 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Crook County, or the United States District Court for the District of Oregon.

9.11 Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

9.12 Condition of City Obligations. All City obligations pursuant to this Agreement which require the expenditure of funds or contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies.

9.13 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties agree to cooperate in defending such action.

9.14 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the party to be excused.

9.15 No Third-Party Beneficiaries. City, PVL, and their successors and assigns are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in

this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

9.16 Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

9.17 Entire Agreement. This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein.

IN WITNESS WHEREOF the parties have executed this document effective the date written below.

Prineville Campus, LLC
a Foreign Limited Liability Company

By: _____
Name: Charles Bauman
Its: Manager

Date

CITY OF PRINEVILLE,
a municipal corporation of the State of Oregon

By: Rodney J. Beebe
Name: Rodney J. Beebe
Its: Mayor

April 27, 2021

Date



City of Prineville Railway

Lamonta Road to N. Main Street

