

**RESOLUTION NO. 1498
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH STATE OF OREGON ACTING BY
AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR TOM McCALL
ROUNABOUT ARTWORK**

Whereas, the Ochoco Highway, OR 126, Highway No. 41, are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission; and

Whereas, Airport Way is part of the City of Prineville (“City”) street system and is under the control of the City; and

Whereas, State of Oregon, acting by and through its Department of Transportation’s (“State”) “FFO-OR126 @ Tom McCall Road (Prineville) Project” (“Project”) is for the design, acquisition of right-of-way and construction of a roundabout at the intersection of OR 126 with Tom McCall Road, Airport Way, and George Millican Road; and

Whereas, City and Crook County entered into Agreement No. 31050 and Amendment No. 1, which codified the roles and responsibilities of the City and Crook County during and upon completion of the Project; and

Whereas, pursuant to Agreement No. 31050, City wishes to construct and install decorative landscaping and decorative artwork within the roundabout on State property; and

Whereas, State has prepared an Intergovernmental Agreement (“Agreement”) for the City’s consideration labeled as Misc. Contracts and Agreements No. 34922; 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 Intergovernmental Agreement attached to this Resolution between the City and County 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 13th day of July, 2021.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

INTERGOVERNMENTAL AGREEMENT
Tom McCall Roundabout Artwork
City of Prineville

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF PRINEVILLE**, acting by and through its elected officials, hereinafter referred to as "City," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The Ochoco Highway, OR 126, Highway No. 41, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
3. Airport Way is a part of the city street system and are under the control of the city.
4. State's 'FFO-OR126 @ Tom McCall Road (Prineville) project (Key No. 18728) is for the design, acquisition of right of way and construction of a roundabout at the intersection of OR126 with Tom McCall Road, Airport Way and George Milican Road.
5. City and Crook County entered into Agmt No. 31050 and Amendment No. 1. Said Agreement and Amendment cover the roles and responsibilities of the Parties both during and upon completion of the Project.
6. Pursuant to Terms of Agreement, Paragraph 7 of Agreement No. 31050, City wishes to construct and install decorative landscaping and decorative artwork within the roundabout on State property.
7. For the purpose of this Agreement, 'Artwork' shall be defined as any drawing, painting, sculpture, statue, or other item of a creative or artistic nature intended or used to attract the interest or attention of travelers, but does not include roadside memorials, political advertising, or other unpermitted signs; and differs from the definition assigned to such term under the Highway Beautification Program (OAR 734, Division 57).

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Parties agree to City soliciting, awarding and installing permanent Artwork within the roundabout consistent with a permit to be issued by State, and supporting Aesthetic Enhancements including decorative landscaping and other appurtenances within the Project boundaries, hereinafter referred to a 'Project'. The location of the Project is identified on the map attached hereto and by this reference made a part hereof.
2. All costs associated with the Project shall be the responsibility of the City.
3. Regarding Artwork and Aesthetic Enhancements, Parties agree that:
 - a) Safety is a primary concern, therefore Artwork and Aesthetic Enhancements allowed to be placed on state highway right-of-way must be found by ODOT to not diminish the safety of travelers or the state highway system;
 - b) The design of all Artwork and Aesthetic Enhancements will be coordinated with the aesthetic design of the highway system and all its features taking into consideration the roadway design, the clear zone, travelers, and environment;
 - c) The design of all Artwork and Aesthetic Enhancements must incorporate long lasting materials and construction techniques that will require minimal care and resist vandalism and must be no larger than a size and scale that is compatible with the surrounding area and landscape.
4. Parties agree that the ADA responsibilities described in Agreement No. 31050 and Amendment No. 1 to Agreement No. 31050 shall be incorporated into this Agreement.
5. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance (and power if applicable) responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within five (5) calendar years following the date of final execution of this Agreement by both Parties.

CITY OBLIGATIONS

1. City shall perform the work described in Exhibit A.
2. City shall be responsible for all costs associated with the Project.
3. City agrees to maintain at its expense all decorative landscaping. Any Artwork and Aesthetic Enhancements associated with the Project and placed within ODOT right of way shall be subject to applicable ODOT policies and standards not specifically mentioned herein. The City shall ensure that the Artwork and Aesthetic

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Enhancements will be kept clean and in good repair; and if damaged by vehicle crashes, vandalism (including graffiti), acts of nature, or regular wear or aging, will be repaired or removed within 14 days of discovery (or offensive graffiti removed within 48 hours of discovery). City agrees that if the Artwork and Aesthetic Enhancements are not maintained, repaired or removed as agreed-upon, the Artwork and Aesthetic Enhancements may be removed by ODOT, after notice to City and reasonable opportunity to cure, at City expense and without commitment by ODOT for restoration, replacement, or compensation to City.

4. City agrees to obtain a separate permit from State for the placement of a city entrance/welcome sign within the roundabout that has been requested by city and approved by State.
5. City shall obtain a miscellaneous permit to occupy State right of way through the State District 10 Office prior to the commencement of construction
6. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. City may perform any work necessary to complete City's obligations for the Project with its own forces or may retain one or more contractors including separate contractors for goods and services, personal services, and public improvement.
8. If City retains any contractors, City shall ensure all contractors follows the public contracting laws within ORS Chapters 279A, 279B and 279C.
9. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
10. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

11. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
12. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
14. Agency's Project Manager for this Project is Eric Klann – City Engineer, 387 NE Third Street, Prineville, OR 97754, (541) 447-2357, eklann@cityofprineville.com, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State agrees that City shall perform the work as described in Terms of Agreement, Paragraph 1 above.
2. State shall bear no financial responsibility for any work performed in conjunction with this Project.
3. State's Project Manager for this Project is Jim Scholtes – Assistant District 10 Manager, 63055 N. Highway 97, Bldg M, Bend, OR 97703, (541) 388-6458, james.m.

scholtesl@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure

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of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS

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CITY OF PRINEVILLE, by and through its
elected officials

By Looney J. Boone
Mayor

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
District 10 Manager

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency's Counsel

Date _____

Agency Contact:

Eric Klann – City Engineer
387 NE Third Street
Prineville, OR 97754
(541) 447-2357
eklann@cityofprineville.com

State Contact:

Jim Scholtes - Assistant District 10
Manager
63055 N. Highway 97, Bldg K
Bend OR, 97701-5765
(541) 388-6458
james.scholtes@odot.state.or.us

EXHIBIT A
Approximate Project Location

