

RESOLUTION NO. 1308

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION (“ODOT”) AND CROOK COUNTY (“COUNTY”) REGARDING INTERSECTION IMPROVEMENTS AT THE INTERSECTION OF OCHOCO HIGHWAY (“OR 126”) AND SW TOM MCCALL ROAD AND MODIFYING THE EXISTING GEORGE MILLICAN ROAD APPROACH TO OR 126

WHEREAS, in January 2012, the City of Prineville (“City”) and County adopted an updated facility corridor plan which included intersection improvements at the intersection of OR 126 and SW Tom McCall Road and modifying the existing George Millican Road approach to OR 126 (the “Project”); and

WHEREAS, the City, County, and ODOT have negotiated the attached Miscellaneous Contracts and Agreements No. 31050, titled “Cooperative Improvement Agreement FFO-OR126 @ Tom McCall Road (Prineville)” (the “Agreement”) which sets out the responsibilities of the parties regarding the Project; and

WHEREAS, pursuant to the Agreement, City is obligated to contribute funds to the Project, including monies held by the City that were contributed by Facebook and Apple as their shares of the Project; and


WHEREAS, City staff believes it is in the best interest of the City to enter into the Agreement;

NOW, THEREFORE, the City of Prineville resolves as follows:

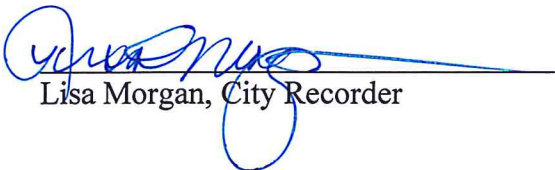
1. The Agreement is approved; and
2. The Mayor and City Manager are authorized and instructed to sign the Agreement on

behalf of the City.

Dated this 24th day of January, 2017.


Betty J. Roppe, Mayor

ATTEST:


Lisa Morgan, City Recorder

**COOPERATIVE IMPROVEMENT AGREEMENT
FFO-OR126 @ TOM MCCALL ROAD (PRINEVILLE)
City of Prineville and Crook County**

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;" the CITY OF PRINEVILLE, acting by and through its elected officials, hereinafter referred to as "City" and CROOK COUNTY, acting by and through its elected officials, hereinafter referred to as "County," all herein referred to collectively as "Parties."

RECITALS

1. 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). SW Tom McCall Road and Airport Way are a part of the city street system under the jurisdiction and control of the City. George Millican Road within the Project limits is a part of the county road system under the jurisdiction and control of the County.
2. City and County adopted an updated Facility Corridor Plan on January 2012 which included intersection improvements at the intersection of OR126 and SW Tom McCall Road and modifying the existing George Millican Road approach to OR126.
3. City wishes to contribute \$283,300.00 in cash to the project.
4. County wishes to contribute \$180,000.00 in cash to the project.
5. County wishes to contribute County owned property to State for right of way within the project limits required to complete the project as more specifically detailed in attached Exhibit B and C, and by this reference made a part hereof.
6. County wishes to contribute County owned property to City for right of way, within the project limits required to complete the project as more specifically detailed in attached Exhibit B and C.
7. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
8. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
9. By the authority granted in ORS 810.210, State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained,

or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.

10. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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 State designing, purchasing right of way and constructing a roundabout at the intersection of OR126 with Tom McCall Road; modifying the existing approach of George Millican Road with OR126, and realigning George Millican Road and Airport Way from their approaches with OR126 to the new roundabout, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch maps attached hereto, marked Exhibits A and B, and by this reference made a part hereof.
2. The work is included in the 2015-2018 State Transportation Improvement Program (STIP) Project titled "FFO-OR126 @ Tom McCall Road (Prineville)", STIP Key No. 18728
3. The Project will be financed at an estimated cost of \$4,500,000 in Federal, State and local funds and shall be financed as follows:

| FUNDING SOURCE | AMOUNT |
|---|--------------------|
| Federal Funds | \$2,649,009 |
| State Funds (inclusive of \$303,191 required match and \$500,000 in Region 4 funds) | \$803,191 |
| City Contribution (cash) | \$283,300 |
| County Contribution (cash) | \$180,000 |
| Estimated value of County property to be contributed to the Project (detailed in attached Exhibits B and C) | \$584,500 |
| ESTIMATED TOTAL PROJECT COST | \$4,500,000 |

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- a) The Project shall be conducted as a part of the Multimodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds.
 - b) MTEP funding for this Project shall be limited to \$2,649,009, exclusive of the State required match.
 - c) The estimate for the total Project cost is subject to change. The Parties agree that if the total estimated Project cost exceeds the available Project funding identified in the table above, any funding shortages shall be resolved per TERMS OF AGREEMENT, Paragraph 8, below. Unless otherwise agreed in a properly executed and approved amendment, under no circumstances shall the State's responsibility under this Agreement exceed \$3,452,200 (comprised of \$2,649,009 in Federal funds, \$303,191 in required Federal match and \$500,000 in Region 4 funds).
 - d) Parties agree that if the actual appraised fair market value of the property to be contributed by County differs from the estimated value of \$584,500, that the sum of the difference between the estimate and the actual appraised value shall be reflected in the total Project cost by an approved STIP amendment to Key No. 18728 and a fully executed amendment to this Agreement.
4. Parties agree that a mutual review of all specifications, staging plans and construction plans shall be conducted, and concurrence reached on all final plans prior to the advertisement of construction plans and request for bid proposals.
 5. The Parties agree to create a public outreach plan, work collaboratively on public meetings, briefings updates and in conducting any other needed public outreach during the life of the Project
 6. Parties agree that upon completion of the Project, State, County and City jurisdictions shall be approximately as shown on Exhibit B, attached hereto, and by this reference made a part hereof.
 7. Maintenance responsibilities shall be as follows, further subject to TERMS OF AGREEMENT, Paragraph 8c below:
 - a) In the event that City constructs or installs decorative landscaping and decorative features within the Project boundaries, City agrees to maintain at its expense all decorative landscaping and decorative features constructed or installed by city under this Project. Any artwork or decorative features on ODOT right of way associated with the Project shall first be approved by the city council for the appropriate theme and then be approved by ODOT for conformance with applicable policies and standards. .

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- b) City agrees to accept ownership of and maintain, at its own expense, any connecting sidewalks that are outside of State jurisdiction and associated with this Project.
8. Parties agree to work collaboratively and in good faith to execute any additional amendment(s) to this agreement, that may be necessary as the Project develops, including but not limited to:
- a) Changes to the Project description, deliverables and obligations.
 - b) Changes to the Project budget or scope.
 - c) Identifying each Party's additional maintenance responsibilities, and power cost responsibilities for equipment installed relating to the Project.
9. If Project includes sidewalks, curb ramps, or pedestrian-activated signals, on or along a State highway, the Parties agree to:
- a) Ensure that such sidewalks, curb ramps, and pedestrian-activated signals comply with the Americans with Disabilities Act of 1990 (ADA) by meeting current ODOT Highway Design Manual standards.
 - b) Follow ODOT's processes for design, modification, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
 - c) At Project completion, complete an ODOT Curb Ramp Inspection Form 734-5020 for each curb ramp constructed, modified, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp is constructed to ODOT's standards and is ADA compliant. State's fillable Curb Ramp Inspection Form and instructions are available at the following address;

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>
 - d) Allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway for ADA compliance prior to acceptance of Project and prior to release of any Project contractor.
10. All employers 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. Parties shall ensure that each of its contractors complies with these requirements.

11. City and County acknowledge and agree that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City and County which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Parties 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Parties expressly agree 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.
13. 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 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 ten (10) calendar years following the date of final execution of this Agreement by both Parties.

CITY OBLIGATIONS

1. City shall, following obligation of the construction phase of the Project and upon receipt of a fully executed copy of this Agreement and a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$283,300, said amount being equal to the City's contribution for the work performed by State under TERMS OF AGREEMENT, Paragraph 1. Unless otherwise agreed in a properly executed and approved amendment, under no circumstances shall City funding obligation under this Agreement exceed \$283,300 in cash.
2. City grants State and its consultants or contractors, the right to enter onto and occupy City right of way within the project limits as required to complete the Project and to stage construction supplies and equipment.
3. City agrees to allow State to complete the utility relocation process per State established statutes, policies and procedures when impacts occur to privately or publicly owned utilities located within City right of way.

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4. City shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 10 Operations Coordinator for the performance of ongoing maintenance within State right of way or jurisdiction on the completed Project. City agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
5. City agrees to have State perform all right of way functions and shall, if required, enter into a separate Right of Way Services Agreement between City and State referencing this Agreement Number.
6. City agrees to accept ownership of County-contributed property needed for additional right of way for City street improvements constructed as part of the Project, dedicate this property to the public, and maintain any improvements made to city owned property, contributed property, or constructed within city's jurisdiction as part of the Project.
7. City shall, at its own expense, periodically inspect and maintain any sidewalks, curb ramps, and pedestrian-activated signals, if any, on portions of the Project under City's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of this Agreement.
8. If City enters into a contract for performance of maintenance on the completed Project, City 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 City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the 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.
9. Any such indemnification shall also provide that neither the City's contractor and subcontractor nor any attorney engaged by City'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 City's contractor is prohibited from defending the State of Oregon, or that City'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 City's contractor if the State of Oregon elects to assume its own defense.

10. City shall perform the services 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.
11. If City enters into a contract for performance of maintenance within State right of way or jurisdiction on the completed Project, then City will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract
 - b. Contractor and City shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with

respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

12. City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the City limits.

13. City, by execution of Agreement, gives its consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by the Agreement.

14. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.

15. City'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. City shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

COUNTY OBLIGATIONS

1. County shall, following obligation of the construction phase of the Project and upon receipt of a fully executed copy of this Agreement and a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$180,000.00, said amount being equal to the County's monetary contribution for the work performed by State under TERMS OF AGREEMENT, Paragraph 1. Unless otherwise agreed in a properly executed and approved amendment, under no circumstances shall County funding under this Agreement exceed \$180,000 in cash plus the actual value of the contributed property as defined in COUNTY OBLIGATIONS, Paragraph 4 below.
2. County agrees to deed to State that County owned property required for additional state right of way for completion of the Project, as more specifically detailed in

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attached Exhibit B and C, said property being a portion of County's contribution to the Project.

3. County agrees to deed to City that County owned property required for additional City right of way for completion of the Project, as more specifically detailed in attached Exhibits B and C, said property being a portion of County's contribution to the Project.
4. The County has estimated the combined value of said property described in COUNTY OBLIGATIONS, Paragraphs 2 and 3 to be \$584,500. The actual fair market value of said property shall be established by an appraisal performed to ODOT standards by an appraiser from State's Qualified Appraiser List (QAL) and applied to the County's contribution to the project. Any differences between the estimated value and the actual fair market value shall be addressed as per TERMS OF AGREEMENT, Paragraph 3(d) above.
5. County agrees to have State perform all right of way functions, and shall enter into a separate Right of Way Services Agreement with State referencing this Agreement Number.
6. In addition to the property contribution set forth in County Obligations Paragraphs 2 and 3 above, County agrees to dedicate to the public that County owned property needed for additional right of way for County road improvements constructed within the Project.
7. County grants State, and its consultants or contractors, the right to enter onto and occupy County right of way within the project limits as required to complete the Project and to stage construction supplies and equipment.
8. County agrees to allow State to complete the utility relocation process per State established statues, policies and procedures when impacts occur to privately or publicly owned utilities located within County right of way.
9. County shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 10 Operations Coordinator for the performance of ongoing maintenance within State right of way or jurisdiction of the completed Project. County agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
10. County agrees to allow temporary closure or detouring of County roads to allow construction and tie in to said roads as deemed necessary by State during the construction phase of the Project.
11. County acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of County.

12. County shall, at its own expense, periodically inspect and maintain any sidewalks, curb ramps, and pedestrian-activated signals, if any, on portions of the Project under County's maintenance jurisdiction upon Project completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of this Agreement.
13. If County enters into a contract for performance of maintenance on the completed Project, County 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 County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the 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.
14. Any such indemnification shall also provide that neither the County's contractor and subcontractor nor any attorney engaged by County'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 County's contractor is prohibited from defending the State of Oregon, or that County'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 City's contractor if the State of Oregon elects to assume its own defense.
15. If County enters into a contract for performance of maintenance within State right of way or jurisdiction on the completed Project, then County will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract
 - b. Contractor and County shall name State as a third party beneficiary of the resulting contract.

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- c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 1,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 2,000,000.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
16. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
17. County's Project Manager for this Project is Bob O'Neal – Road Master, 1306 N. Main Street, Prineville, OR 97754, (541) 447-4644, Bob.oneal@co.crook.or.us, or assigned designee upon individual's absence. County shall notify the other Parties in writing of any contact information changes during the term of this Agreement

STATE OBLIGATIONS

1. State shall complete the Project as described in TERMS OF AGREEMENT, Paragraph 1.
2. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; acquire all needed right of way, identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
3. State shall, following obligation of the construction phase of the Project and fully executing this Agreement, forward to City a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$283,300.00 for contribution of work performed by State under TERMS OF AGREEMENT, Paragraph 1.
4. State shall, following obligation of the construction phase of the Project and fully executing this Agreement, forward to County a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$180,000.00 for contribution of work performed by State under TERMS OF AGREEMENT, Paragraph 1.
5. State shall contract with an appraiser from State's QAL to perform an appraisal to ODOT standards of County owned property needed for the Project. The appraised value of said County property will be applied to County's contribution to Project identified in Terms of Agreement Paragraph 3 and County Obligations paragraph 2; however, any revision to the estimated value of the property identified in Terms of Agreement Paragraph 3 and County Obligations paragraph 2 shall be done through a fully executed amendment to this Agreement.
6. State agrees to accept the County-contributed property needed for additional right of way for State highway improvements made as part of the Project.
7. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on State, City and County right of way.
8. State agrees to submit any requests for approvals required by the State Traffic Engineer for the roundabout when the details of the roundabout improvements at the intersection of OR126 and Tom McCall Road have been finalized.

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9. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
10. State grants authority to City and County to enter upon State right of way for the maintenance of the completed Project as provided for in miscellaneous permit to be issued by State District 10 Office.
11. State's Project Manager for this Project is Mike Darling, Senior Project Leader, 63055 N Hwy 97, Bldg M, Bend, OR 97703, (541) 388-6329, charles.m.darling@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Parties 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 all Parties.
2. State may terminate this Agreement effective upon delivery of written notice to City and County, or at such later date as may be established by State, under any of the following conditions:
 - a) If City or County fail to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b) If City or County fail 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 City or County fails to provide payment of its share of the cost of the Project.
 - d) 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.
 - e) 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.

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4. Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
5. 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 a Party with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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.
6. With respect to a Third Party Claim for which State is jointly liable with any other Party or Parties (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 the other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties 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 the other Party or Parties 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.
7. With respect to a Third Party Claim for which City or County is jointly liable with State (or would be if joined in the Third Party Claim), City and County 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 City and County 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 City and County 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. City and County's contribution amount(s) 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 each had sole liability in the proceeding.

8. 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.
9. 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.
10. 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 any Party unless in writing and signed by all 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 of any Party to enforce any provision of this Agreement shall not constitute a waiver by either Party 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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18728) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

City of Prineville/Crook County/ODOT Agreement No. 31050

CITY OF PRINEVILLE, by and through its elected officials

By Betty J. Poppel
Mayor

Date 1/24/17

By [Signature]

Date 1/24/17

APPROVED AS TO LEGAL SUFFICIENCY

By Carl Dutli
Counsel Carl Dutli

Date 2/1/17

CROOK COUNTY, by and through its elected officials

Seth Crawford
Seth Crawford, County Judge

Date: 1/18/17

Jerry Brummer
Jerry Brummer, County Commissioner

Date: 1/18/17

[Vacant], County Commissioner

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Counsel Jeffrey M. Wilson

Date 1-18-17

STATE OF OREGON, by and through its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 4 Manager

Date _____

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Technical Services Manager/Chief Engineer

Date _____

By _____
Region 4 Right of Way Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

City of Prineville/Crook County/ODOT
Agreement No. 31050

City Contact:

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

County Contact:

Bob O'Neal – Roadmaster
1306 N. Main Street
Prineville, OR 97754
(541) 447-4644
Bob.oneal@co.crook.or.us

State Contact:

Mike Darling – Senior Project Manager
63055 N. Highway 97, Bldg M
Bend OR, 97703-5765
(541) 388-6329
Charles.m.darling@odot.state.or.us

EXHIBIT A – Project Location Map

Approximate Project Location

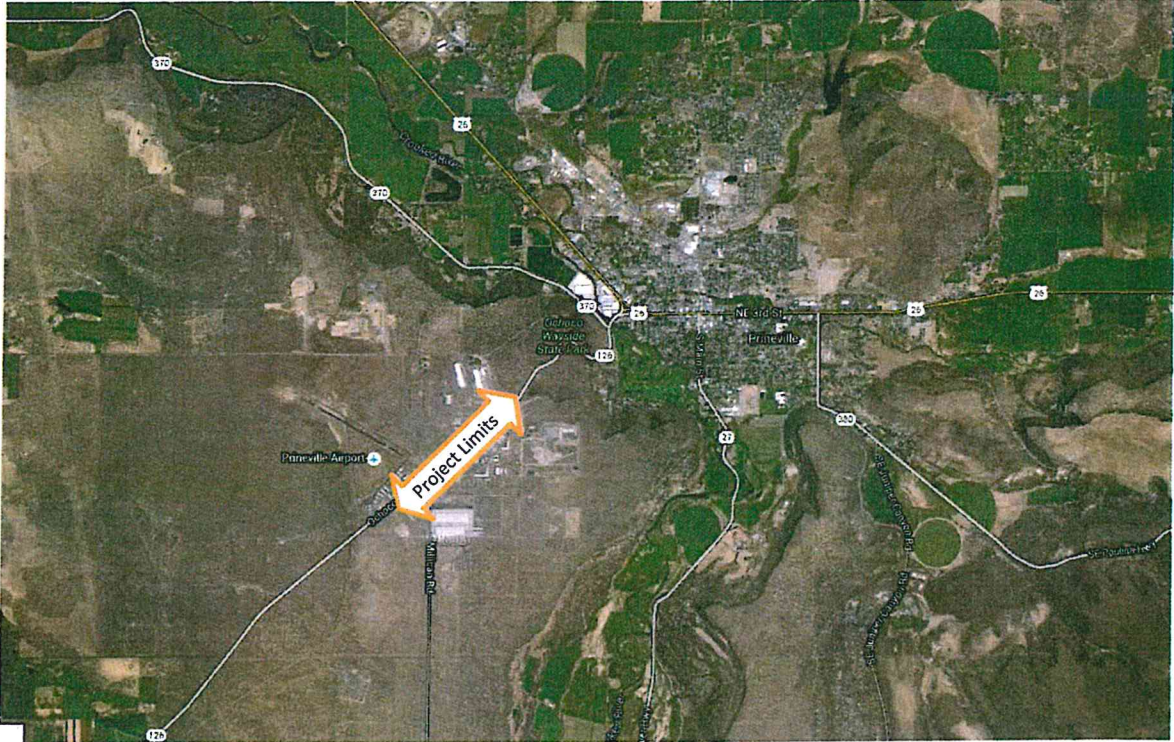
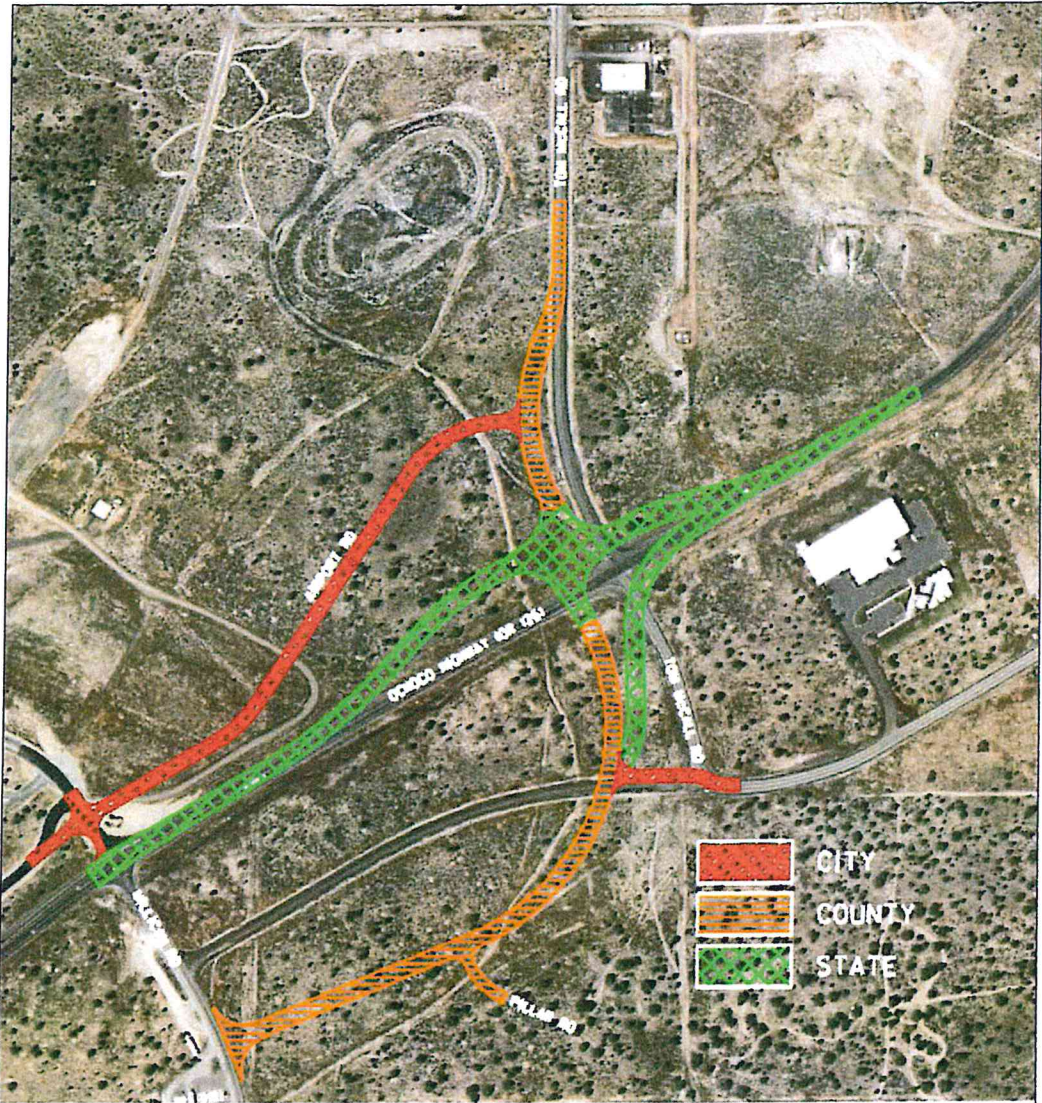
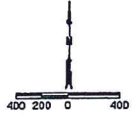


EXHIBIT B

Proposed Ownership and Jurisdiction of Property at Completion of Project



**OR 126 @ TOM McCALL
ROAD JURISDICTION MAP
DECEMBER 2016**



**Harper
Houf Peterson
Righellis Inc.**
250 NW Franklin Avenue, Suite 404, Bend, OR 97705
phone: 541.318.1161 www.hhp.com fax: 541.318.1161

EXHIBIT C

Current Ownership of Property Affected by Project

