

COOPERATIVE AGREEMENT

PROJECT NAME: City of Prineville Wetland and Floodplain Enhancement, Pilot Phase

PROJECT NUMBER: 206-327

This AGREEMENT is made and entered into by the CITY OF PRINEVILLE, a local government hereinafter referred to as the "CITY", and the CROOKED RIVER WATERSHED COUNCIL, a State of Oregon non-profit organization hereinafter referred to as the "COUNCIL", hereinafter collectively referred to as the "Parties".

The purpose of this Cooperative Agreement is to identify the project objectives, identify the responsibilities and duties the Parties, and enumerate the terms of the AGREEMENT.

OBJECTIVES

This AGREEMENT is entered into between the Parties to accomplish the following objectives:

1. To establish a partnership between the Parties for conducting habitat restoration on CITY owned property.
2. To expand the floodplain capacity of the Lower Crooked River.
3. To enhance an existing wetland and expand its boundaries.
4. To create both high and low flow refugia for resident and anadromous fish species.
5. To improve riparian conditions on a segment of the Lower Crooked River.

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

TERMS OF AGREEMENT

1. The Parties agree to create and maintain wetlands and a floodplain throughout an approximate 3.5 acre site located approximately two miles northwest of Prineville in Section 26, Township 14S, Range 15E and adjacent to the Crooked River as shown on the attached Exhibit A, hereinafter referred to as the "Pilot Project".
2. Future work may be implemented beyond the scope of the Pilot Project, and as such the cumulative of all work will be hereinafter referred to as the "Project". All future phases of work will require a new cooperative agreement that reaffirms the Parties commitments.
3. The Pilot Project will be financed through an Oregon Watershed Enhancement Board grant totaling \$183,500 and a US Fish and Wildlife Service Partners for Fish and Wildlife Program grant of \$20,000. The specific cost for the Pilot Project will likely be less than the total cost of the Project. Any funding remaining after the Pilot Project is complete will be applied to future phases of the Project. If the Project requires more funding than is available from existing grants and current commitments from the CITY, the COUNCIL will be responsible for acquiring all additional funding, the Parties will not be held responsible for completing work for which funding is not available to complete.

4. This AGREEMENT shall begin on the date all required signatures are obtained and shall terminate upon completion of the Pilot Project, or ten calendar years following the date all required signatures are obtained, whichever is sooner.

CITY OBLIGATIONS

1. The CITY owns the property necessary for the Pilot Project, and shall retain ownership for the duration of the Pilot Project.
2. The CITY shall conduct excavation and grading of wetlands and floodplain under the supervision of the COUNCIL Restoration Project Manager or other assigned staff member.
3. The CITY shall maintain or install fencing to insure that grazing animals and unauthorized vehicles cannot access the Pilot Project.
4. The CITY, and any successors in interest to the property, shall maintain or shall contract for the maintenance of the Pilot Project to ensure it continues to meet its objectives following the initial establishment period, which is defined as five years following the completion of construction (hereinafter referred to as the "establishment period"). The CITY shall not dispose of or transfer the property without prior consent of the COUNCIL, which will be conditioned upon any successor in interest being obligated to continue the maintenance of the Pilot Project.
5. The CITY shall implement a conservation easement or deed restriction to insure that the Pilot Project is protected in perpetuity. The permanent restriction on the use of the Pilot Project property is valued at \$52,500 (\$15,000/acre) based on an estimate from Mike Warren, Sr., the realtor of record for the City of Prineville. This value will be regarded as an in-kind donation to the Pilot Project.
6. The CITY shall identify and allow permanent access to the Pilot Project to the COUNCIL and any restoration partners (e.g., Oregon Department of Transportation, Crooked River Weed Management Area, the Deschutes Basin Land Trust). The CITY shall deny access to sewage treatment areas.
7. To maintain ecological functions of the Pilot Project and the surrounding land, the CITY shall comply with Crook County Ordinance No. 139, providing for the control of noxious weeds in the Pilot Project. In the event that the land is annexed into the City of Prineville, the CITY shall continue to comply with the Crook County weed ordinance in the Pilot Project.
8. The CITY shall perform excavation and hauling for the Pilot Project. Excavation for the Pilot Project is estimated to be 20,000 cubic yards, and production will be approximately 2,500 cubic yards per day for approximately 8 days. Rental for an excavator to perform this task is estimated to be \$5,000 for a 320 or larger excavator. Two off-road haul trucks are estimated to cost \$12,800. Fuel costs are estimated to be \$2,400. These costs will be reimbursed to the CITY by the COUNCIL. The CITY shall contribute the cost of the equipment operators and supervisor(s) at an estimated cost of \$7,237.12 for the Pilot Project. This value will be considered a cash donation to the Project. Notwithstanding the value of the permanent restriction on the use of the Pilot Project property, the total contribution from the CITY of the

all phases of the Project shall not exceed \$25,875 without prior written consent from the CITY.

9. The Parties agree that all employers subject to this AGREEMENT shall provide required Compensation coverage for their employees unless such employers are exempt. The Parties agree that each of its subcontractors complies with these requirements.
10. The CITY acknowledges that the COUNCIL and its duly authorized representatives shall have access to all records, documents, papers, and financial information from the CITY that are directly pertinent to this AGREEMENT for the purpose of conducting an audit or examination for a period of three years after completion of the Pilot PROJECT. Copies of all applicable records shall be made available upon request. Payment for costs of copies shall be at the expense of the COUNCIL.
11. The CITY shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work conducted under this AGREEMENT.

COUNCIL OBLIGATIONS

1. The COUNCIL shall conduct all planning and research needed to create a viable Pilot Project plan.
2. The COUNCIL shall assist the CITY in obtaining long term protection for the Pilot Project and assist in acquiring all necessary permits required for the project, including Oregon Division of State Lands and Army Corp of Engineers in-water work permits.
3. The COUNCIL, or its hired contractors, shall survey the Pilot Project area and prepare a report describing the Pilot Project plan. Each phase of the Project, beginning with the Pilot Project, will require its own survey and plan, and will have an individual report for that phase.
4. The COUNCIL shall consult with all regulating agencies, as appropriate, in order to fully comply with Section 7 of the Endangered Species Act, Section 404 of the Clean Water Act, and the Oregon Removal-Fill Law. The COUNCIL shall update the CITY on the consultation process and will not make agreements concerning the Pilot Project with regulating agencies without the concurrence of the CITY.
5. The COUNCIL shall supervise construction and planting of the Pilot Project, contract the planting and seeding required for the Pilot Project with a reputable contractor, and regularly monitor the Pilot Project during its establishment period to assess its functions, plant survival, and general health. The COUNCIL shall submit annual monitoring reports to the appropriate agencies and the CITY.
6. The COUNCIL shall maintain the Pilot Project during the establishment period.

7. The COUNCIL shall be responsible for all costs associated with construction and installation of the Pilot Project, excepting those costs detailed in CITY OBLIGATIONS No. 8.
8. The COUNCIL's Project Manager for the Pilot Project is Devin Best, Lower Crooked River Restoration Project Manager for the Crooked River Watershed Council, 498 SE Lynn Blvd., Prineville, OR 97754 (541-416-6635). The Council's Executive Director, Max Pincus Smith, will be responsible for Project agreements and financing (541-447-3548).

GENERAL PROVISIONS

1. The Parties agree that a mutual review of Project Plans will be conducted prior to the commencement of each phase of the Project.
2. This AGREEMENT may be terminated by mutual written consent of both parties.
3. Either Party may terminate this AGREEMENT effectively upon delivery of written notice to the other Party, or at such later date as may be established by the aggrieved Party, under any of the following conditions:
 - a. If either Party fails to provide services called for by this AGREEMENT within the time specified herein or any extension thereof.
 - b. If either Party 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 the aggrieved Party specifying the nature of such failures with reasonable particularity fails to correct such failures within forty-five (45) days or such longer period as authorized in writing. However, if the failures are of such a nature that they cannot be completely remedied within the 45 day period, this provision shall be complied with if the party receiving the notice begins correction of the failures within the 45 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
 - c. If either Party fails to receive funding, appropriations, or other expenditure authority sufficient to allow either Party 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 that either Party is prohibited from paying for such work.
4. Any termination of this AGREEMENT shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. Each Party shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the other Party, their officers and

employees from any and all claims, suits, and liabilities which may occur in their respective performance of this Pilot Project.

6. Neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party, not purport to act as legal representative of the other Party without the prior written consent of the legal counsel of such other Party. Each Party may, at any time at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that the other Party is not adequately defending its interests.
7. This AGREEMENT shall become binding when signed by the parties. This AGREEMENT may be executed in several counterparts (e.g. facsimile or otherwise) all of which when taken together shall constitute one agreement binding on the Parties. Each copy of this AGREEMENT so executed shall constitute an original.
8. This AGREEMENT and any attached exhibits supersede all prior or contemporaneous communications and negotiations, both oral and written and constitute the entire AGREEMENT between the parties relating to the work set out above. No amendment or modification shall be effective except in writing signed by both parties.
9. If any provision of this AGREEMENT is held invalid, the other provisions of the Contract shall not be affected thereby.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT, effective as of the last date written below.

City of Prineville, by and through its officials,
elected or otherwise.

By _____
Title _____
Date _____

Crooked River Watershed Council,
by and through its Executive Director

By _____
Executive Director
Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Title _____
Date _____