

RESOLUTION NO. 1304

A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH CROOK COUNTY AND OCHOCO IRRIGATION DISTRICT REGARDING PERMITTING AND DESIGN OF A HYDROELECTRIC GENERATION FACILITY AT BOWMAN DAM

WHEREAS, the Crooked River Collaborative Water Security and Jobs Act of 2014 (the “Act”) was passed by the United States Congress on December 11, 2014, and signed into law by President Obama on December 18, 2014; and

WHEREAS, the Act adjusted the boundary of the Wild and Scenic segment of the Crooked River so the construction of a hydroelectric facility at Bowman Dam is now allowed; and

WHEREAS, the City of Prineville (“City”), Crook County (“County”), and Ochoco Irrigation District (“OID”) (collectively the “Parties”), had a feasibility study prepared related to the installation of a hydroelectric generation facility at Bowman Dam which was paid for by a grant secured from Energy Trust of Oregon; and

WHEREAS, the feasibility study indicates a hydroelectric generation facility is feasible at Bowman Dam; and

WHEREAS, the Parties have prepared the required preliminary application documents for a hydroelectric generation facility at Bowman Dam; and

WHEREAS, the next step in moving forward with the hydroelectric generation facility is applying for a permit from the Federal Energy Regulatory Commission and designing the hydroelectric generation facility; and

WHEREAS, the hydroelectric generation facility gives the City an opportunity to provide green power to a company currently located in Prineville or to entice companies to locate in Prineville; and

WHEREAS, the hydroelectric generation facility could provide a revenue stream for the City, County, and OID; and

WHEREAS, the hydroelectric generation facility could provide more revenue to capitalize for conservation and improvement projects for OID; and

WHEREAS, City staff members have negotiated an Intergovernmental Agreement between the City, County, and OID, regarding the permitting and design of the hydroelectric generation facility, which Agreement is attached as Exhibit A to this Resolution; and

WHEREAS, City staff believes it is in the best interests of the City to approve and execute the Intergovernmental Agreement.

NOW, THEREFORE, the City of Prineville resolves that the Intergovernmental Agreement attached as Exhibit A, is hereby approved and the Mayor and City Manager are authorized and instructed to sign such Agreement on behalf of the City of Prineville.

Passed by the City Council this _____ day of October, 2016.

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL Agreement (“Agreement”) in entered into effective _____, 2016, by and between the **City of Prineville**, an Oregon municipal corporation, (“City”), **Crook County**, a political subdivision of the State of Oregon (“County”), and **Ochoco Irrigation District**, an Oregon special district formed under ORS Chapter 545 (“District”), collectively the “Parties” and individually a “Party.”

RECITALS:

- A. City, County, and District are authorized pursuant to ORS 190.003-190.110 to enter into an Intergovernmental Agreement.
- B. Since 2008, City, County, and District have sought federal legislation to provide water certainty to their citizens. Over \$1,000,000 was invested in this effort, which was successful with the passage of the Crooked River Collaborative Water Security and Jobs Act of 2014 (the “Act”). The Act was passed by Congress on December 11, 2014, and was signed into law by President Obama on December 18, 2014. The Act provides water certainty to the City; ensures the stored water from Prineville Reservoir will be used to fulfill existing water supply contracts for local irrigation districts, farmers, and ranchers before stored water is released for other purposes; allows the additional release of water to benefit downstream fish and wildlife; and amends the Wild and Scenic Rivers Act to adjust the upstream boundary of a wild and scenic segment of the Crooked River.
- C. The amendment of the Wild Scenic Rivers Act will now allow for the construction of a hydroelectric facility on Bowman Dam. Since the District operates Bowman Dam, a Bureau of Reclamation facility, the District has Municipal Preference for the construction of a hydroelectric facility. The Parties recently secured a grant from the Energy Trust of Oregon to develop a feasibility study related to the installation of hydroelectric generation on Bowman Dam. This study, dated May 12, 2015, entitled “Bowman Dam Hydroelectric Feasibility Study – Phase II” indicates that a hydroelectric generation project (the “Project”) is feasible at this site. The Parties have also prepared the required preliminary application documents and applied on July 1, 2016, to the Federal Energy Regulatory Commission for the permitting and design phase (“P&D Phase”) of the Project. As indicated in the feasibility study, the design process for the Project is expected to cost upwards of \$2,100,000.
- D. The Parties agree that the Project is worthy of pursuing and desire to team together to move the Project forward.

BASED UPON the above Recitals and the following covenants, the Parties agree as follows:

1. All costs associated with the P&D Phase of the Project will be divided equally between the Parties. District will receive all bills related to the P&D Phase of the Project and furnish copies to each of the other Parties. Within thirty (30) days of receipt of a bill, City and County shall each deliver to District a check made payable to District for one-third of the amount of the bill. District shall pay the bills upon receipt of the checks from City and County.
2. The Parties shall agree by consensus or, if there is no consensus, by majority vote, with each Party having one vote, on the course of action the Parties shall take regarding the P&D Phase of the Project, including, but not limited to selection of providers.
3. Any information any Party receives regarding the Project shall be furnished to the other Parties. The Parties shall have meetings regarding the Project as they deem appropriate.
4. Any grants that are received by any Party for the P&D Phase shall reduce the total cost the Parties pay for the P&D Phase and shall not be credited solely to the Party that received the grant.
5. If a permit is issued to construct a hydroelectric facility, the Parties will attempt to negotiate an agreement regarding construction and operation of the hydroelectric facility. A Party may decline to participate in constructing and operating the hydroelectric facility. If an agreement is not reached by the Parties or any two of the Parties regarding construction and operation of the hydroelectric facility, District shall have the right at its own cost to construct and operate the facility and shall receive all income from the facility. Any Party who decides not to participate in constructing and operating the hydroelectric facility, shall not be entitled to: a) reimbursement of its costs, including but not limited to the cost of the feasibility study or the cost of permitting and design (P & D); or b) any portion of the revenue from the operation of a hydroelectric facility at Bowman Dam.
6. Neither this Agreement, nor any of the rights granted by this Agreement, may be assigned or transferred by any Party.
7. None of the Parties are, by virtue of this Agreement, a partner or joint venturing with any other Party and no Party shall have any obligation with the respect to any other Party's debts or liabilities of whatever kind or nature, except as otherwise provided herein.
8. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300,

a. City shall defend, save, hold harmless, and indemnify County and District and its officers, employees, and agents respectively from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of City or its officers, employees, contractors, or agents under this Agreement, and

b. County shall defend, save, hold harmless, and indemnify City and District and its officers, employees, and agents respectively from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees, contractors, or agents under this Agreement.

c. District shall defend, save, hold harmless, and indemnify City and County and its officers, employees, and agents respectively from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of District or its officers, employees, contractors, or agents under this Agreement.

d. No Party shall be liable to the other for any incidental or consequential damages arising out of or related to this Agreement. No Party shall be liable for any damages of any sort arising solely from the termination of this Agreement or any part hereof in accordance with its terms.

9. In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to fulfill or comply with any of the terms of this Agreement, each Party shall be responsible for its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

10. The failure by any Party to enforce any provisions of this Agreement shall not constitute a waiver by that Party of that provision or of any other provision of this Agreement.

11. Should any provision or provisions of this Agreement be construed by a court of competent jurisdiction to be void, invalid, or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair, or invalidate any of the other provisions of this Agreement, which shall remain in full force and effect.

12. Any Party may terminate its participation in this Agreement upon forty-five (45) calendar days advance written notice to the remaining Parties, if that Party does not obtain funding, appropriations and other expenditure authorizations from its governing body, federal, state, or other sources sufficient to permit that Party to satisfy its performance obligations under this Agreement, as determined by that Party in the reasonable exercise of its administrative discretion. Notwithstanding

the above, any Party's termination of its participation in this Agreement shall not prejudice any obligations or liabilities that accrued prior to such termination.

13. All notices and other communications under this Agreement must be in writing and shall be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail to a Party at the following addresses, or emailed to a Party at the following internet address, or at such other address, facsimile number, or email address as a Party mail designate by like notice to the other Parties:

To: City of Prineville
387 NE Third Street
Prineville, OR 97754
Attn: City Manager
Fax: 541-447-5628
sforrester@cityofprineville.com

To: Crook County
300 NE Third Street
Prineville, OR 97754
Attn: County Judge
Fax: 541-416-0353
jeff.wilson@co.crook.or.us

To: Ochoco Irrigation District
1001 NW Deer Street
Prineville, OR 97754
Attn: Manager
Fax: 541-447-6449

Any notice or other communication shall be deemed to be given a) on the date of personal delivery; b) at the expiration or the second day after the date of deposit in the United States mail; c) on the date of confirmed delivery by facsimile; or d) on the date of confirmed emailing.

14. This Agreement may not be modified or amended except by writing signed by all the Parties.

15. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior contemporaneous agreements or understandings between the Parties, if any, whether written or oral, concerning the subject matter of this Agreement which are not fully expressed herein.

16. This Agreement and any subsequent amendments may be executed in several counterparts, 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 and any amendments so executed shall constitute an original.

City of Prineville

By: _____
Betty J. Roppe, Mayor

By: _____
Steve Forrester, City Manager

Crook County

By: _____
Mike McCabe, County Judge

By: _____
Ken Fahlgren, County Commissioner

By: _____
Seth Crawford, County Commissioner

Ochoco Irrigation District

By: _____
Brian Barney, Chairman

By: _____
Wade Flegel, Board Member

By: _____
Dean Davis, Board Member