

## RESOLUTION NO. 1291

### A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION ("ODOT") REGARDING CONSTRUCTION OF AN ENHANCED PEDESTRIAN CROSSING AT THE INTERSECTION OF SE LYNN BOULEVARD AND SE KNOWLEDGE STREET

WHEREAS, the City of Prineville ("City") has identified the pedestrian crossing on SE Lynn Boulevard at SE Knowledge Street as a hazardous intersection and has requested funds from ODOT for an enhanced pedestrian crossing; and

WHEREAS, the City and ODOT have negotiated Misc. Contracts and Agreements, Agreement No. 31211 ("Agreement") under the terms of which ODOT shall provide City with \$50,721 to construct the following improvements on SE Lynn Boulevard at the crosswalk on the east side of SE Knowledge Street:

- a. Rectangular Rapid Flashing Beacons (RRFB) consisting of:
  - i. Two (2) RRFBs for each direction;
  - ii. Pedestrian activated push buttons; and
  - iii. Advance crosswalk signs
- b. Illumination for crosswalk;
- c. Continental thermoplastic crosswalk markings; and
- d. Advance stop here for pedestrian signing with thermoplastic stop bar; and

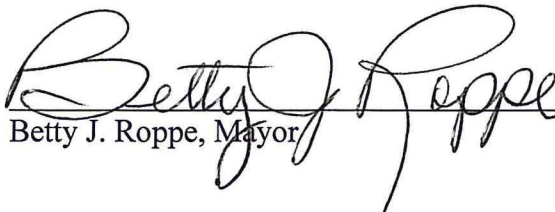
WHEREAS, City staff believes the \$50,721 for the above-described improvements is sufficient to construct the enhanced pedestrian crossing; and

WHEREAS, City staff believes it is in the best interest of the City to enter into the Agreement and to accept the \$50,721 from ODOT;

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

1. That the City shall enter into the Agreement and accept the \$50,721 to construct the enhanced pedestrian crossing on SE Lynn Boulevard at the east side of SE Knowledge Street; and
2. The Mayor is authorized and instructed to sign the Agreement on behalf of the City.

Dated this 10<sup>th</sup> day of May, 2016.

  
Betty J. Roppe, Mayor

ATTEST:

  
Lisa Morgan, City Recorder

**INTERGOVERNMENTAL AGREEMENT  
SE Lynn Street (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 "Agency," 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. State's OR280 Ochoco Creek Bridge Replacement Project (Key No. 19209) consists of replacing Bridge No. 07282 at approximately mile point 0.11 which has been determined to be structurally deficient.
3. State and Agency entered into Agreement No. 30022 on March 21, 2016, which defines the detour route and the timing of the detour route to be used during the construction of the replacement Ochoco Creek Bridge.
4. SE Lynn Street and SE Knowledge Street are a part of the City Street system under the jurisdiction and control of Agency.

**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, Agency shall construct an enhanced pedestrian crossing of SE Lynn Street at the east side of SE Knowledge Street consisting of the following:
  - a) Rectangular Rapid Flashing Beacons (RRFB) consisting of:
    - I. Two (2) RRFB's for each direction (minimum).
    - II. Pedestrian Activated push buttons.
    - III. Advance crosswalk signs.
  - b) Illumination for crosswalk;
  - c) Continental crosswalk markings (thermoplastic);
  - d) Advance stop here for pedestrian signing with thermoplastic stop bar;

The above said elements shall hereinafter be referred to as "Project." The location of the Project is approximately as shown on the sketch maps attached hereto, marked Exhibit A, and by this reference made a part hereof.



2. The Project will be financed at an estimated cost of \$50,721 in state funds. The estimate for the total Project cost is subject to change. Agency shall be responsible for Project costs beyond the estimate.
3. This Agreement does not change the existing jurisdiction or maintenance responsibilities of any roadway, signals, traffic control devices, signage, or appurtenances
4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in TERMS OF AGREEMENT, Paragraph 1, above.
2. Agency shall, upon receipt of a fully executed copy of this Agreement, forward to State a letter of request in the amount of \$50,721.
3. Agency shall keep accurate cost accounting records. Agency shall prepare and submit an itemized final ledger report for all project costs directly to State's Project Manager at completion of project and return to State any unused funds in excess of the actual total Project cost.
4. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State. 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 [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, 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.
5. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with



the right of way requirements contained in this Agreement. The certification form shall be routed through the State Region 4 Right of Way Office for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

6. 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.
7. 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.
8. 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.
9. 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 anytime 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.
10. Agency acknowledges and agrees 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 Agency 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.

11. 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.
12. Agency's Contact for this Agreement 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 shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from Agency, forward to Agency an advance deposit or irrevocable letter of credit in the amount of \$50,721 for the Project. 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.
2. State's Project Manager for this Project is Dan Serpico, Sr. Traffic Analyst, 63055 N Highway 97, Bldg K, Bend OR 97703, (541) 388-6170, daniel.s.serpico@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.



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- 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



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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. Agency acknowledges and agrees that the source of funds for this Agreement are from the United States Department of Transportation; that certain requirements, restrictions and conditions are placed upon the expenditure of said funds; and that Agency will comply with such requirements, restrictions and conditions which are applicable to Agency as performing the identified services to State under this Agreement.
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 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 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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program, (Key #19758) that was adopted by the Oregon Transportation Commission on May 20, 2015 (or subsequently approved by amendment to the STIP).

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**CITY OF PRINEVILLE**, by and through its  
elected officials

By Betty J. Koppel  
Mayor

Date May 10<sup>th</sup>, 2016

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Region 4 Traffic Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By N/A  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

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

**State Contact:**

Dan Serpico – Sr. Traffic Analyst  
63055 N Highway 97, Bldg K  
Bend, OR 97703  
(541) 388-6170  
[Daniel.s.serpico@odot.state.or.us](mailto:Daniel.s.serpico@odot.state.or.us)



EXHIBIT A

