



**Location:** City Hall – Council Chambers  
**Date:** May 12, 2020  
**Time:** 6:30 PM

## City Council Meeting Agenda

Mayor Steve Uffelman, Council Members Jason Beebe, Janet Hutchison, Patricia Jungmann, Gail Merritt, Jeff Papke, Teresa Rodriguez and City Manager Steve Forrester

**This meeting will be open to the public by telephonic communications due to commitment to eliminate the exposure and spread of COVID-19. This meeting can be attended by calling 346-248-7799 Meeting ID 947 5839 2608. Please visit our website for additional meeting information.**

### Call to Order

### Flag Salute

### Additions to Agenda

### Consent Agenda

1. Regular Meeting Brief 4-28-2020

### Visitors, Appearances and Requests

2. Crook County COVID Plan Update - Muriel DeLavernne-Brown

### Council Business

3. Request to Exempt a Contract for the Barnes Butte Pedestrian Bridge (**PUBLIC HEARING**) - Eric Klann / Jered Reid

### Staff Reports and Requests

4. City Manager Report - Steve Forrester
5. Meadow Lakes Remodel Update - Zach Lampert

### Committee Reports

6. COVID -19 Update / Discussions - Mayor Uffelman

### Ordinances

### Resolutions

7. Resolution No. 1438 - Authorizing the Sale of Real Property to Marcum and Son's LLC - Jered Reid
8. Resolution No. 1439 - Approving a 2020 Fund Exchange Agreement with ODOT - Scott Smith

### Visitors, Appearances and Requests

### Adjourn

*Agenda items maybe added or removed as necessary after publication deadline*



**CITY OF PRINEVILLE**  
**Regular Meeting Brief**  
387 NE Third Street – Prineville, OR 97754  
541.447.5627 ph 541-447-5628 fax

Full Meeting Recordings Available at:  
<http://cityofprineville.com/meetings/>

**City Council Meeting Brief**  
**April 28, 2020**

**Council Members Present:**

Gail Merritt

Teresa Rodriguez

Janet Hutchison

Steve Uffelman

Patricia Jungmann

Jason Beebe

Jeff Papke

**Council Members Absent**

None.

**Additions to the Agenda**

Remove Item No. 2 (The Beer Trailer) from the Consent Agenda and add William Marks from Facebook under Visitors, Appearances and Requests. Jered Reid, City Attorney stated that after the regular public Council meeting, Council will return to Executive Session and will not come back into regular session.

**Consent Agenda**

1. Regular Meeting Brief 4-14-2020
2. Shut Up – N – Drink Liquor License Application

**Councilor Rodriguez made a motion to approve the Consent Agenda as presented. Motion seconded. No discussion on motion, motion carried.**

**Visitors, Appearances and Requests:**

**3. St. Charles Hospital / Crook County Health Department**

Muriel DeLavernne-Brown, Crook County Health Department Health & Human Services Director began with COVID – 19 statistics at the state and local levels. Ms. DeLavernne-Brown explained that they are putting out health newsletters as well as daily reports. Health of this community has been priority and watching it move. They participate in weekly command meetings, with all critical staff community wide. It can't be stopped until we have a cure. It is going to be a challenge since it came to the US. They are leading by example at health

department to send a positive and consistent message. We are looking at how we re-open at Crook County as well as regionally and statewide.

Vicky Ryan, Crook County Health Department Emergency Preparedness Coordinator, talked about health care facilities, PPE and the framework for reopening. Ms. Ryan explained about the strategic PPE stock pile and how we have been on that list all along. We have a good supply, however if we have an outbreak we would need more. Funeral homes are getting supplies and people that have passed on from COVID – 19 are being sent home to be processed.

Katie Plumb, Crook County Health Department Health & Human Services Deputy Director, talked about surveillance for monitoring; communication strategy is robust; guidance changing and evolving, but has a point of contact for information; provide social media reports; making sure website is up to date; and long term care facilities. They are also trying to keep up with wildfire season coming up as well as overdoses, etc. and how to mitigate through multiple emergency plans. The business sector has a wide variety of needs and are working hard to stay open, and are looking hard at getting business specific info to be able to open,

Ms. DeLavernne-Brown wrapped it up by saying they are really looking at recovery and thanked everyone for having them.

Todd Shields, St. Charles Prineville Vice President and Hospital Administrator explained that they are focusing on four categories and went through each.

Dr. Maggie King talked about testing and provided an overview. There is frustrations regarding being able to be tested and how it has expanded, and the time frame for results. Home testing kits and rapid testing are coming and might have 3,000 by end of May. Only testing folks that are Asystematic. There are many questions regarding antibody testing which it is a long way from becoming real, though many companies are offering yet none are FDA approved and cannot be validated. Even if you have antibodies there isn't a chance that you can't get it again. The true answer is a vaccine is about a year out.

Discussions continued regarding how many in Crook County have been tested and about 800 have been tested with only the one in the county so far;. How Oregon was reported as being the 4<sup>th</sup> lowest in state for testing; and how can we open?

Dr King talked about even the sickest of the sickest have been tested and came back negative. How often to be tested? You can have negative test result and 3 days later be positive.

Discussions continued about metro areas and being stacked up, and the possibilities of opening rural vs. metro; and the challenge for Crook County is we have a lot of visitors and how do we do this as a region.

**4. William Marks – Facebook Community Development Manager**

Mr. Marks talked about his last visit with council and the robot. He thanked everyone for the partnerships here locally with Facebook. Mr. Marks explained that he had a COVID relief announcement and they are trying rally as much resources as possible to get help to people. Mr. Marks explained that it was important to get each student in Crook County a lap top for school work which included supplying each school bus with wi-fi access including the software and security for three years to run it. Mr. Marks said they have a link on their Prineville Data Center Facebook page to provide additional resources to businesses. There are also resources that have been made available to non-profits and health care professionals training. All that funding is moving at this time and is trying to get it out to those that need it as quickly as possible and it is only for Prineville / Crook County.

Steve Forrester, City Manager said he is amazed at Facebook’s commitment to this community and thanked them for all that they have done.

**5. Streetscape Plan Design – Third Street – Ben Weber, Sera Design / Josh Smith**

Josh Smith, Planning Director provided the background summary of this project and how long it has been going on.

Mike Darling, ODOT Sr. Transportation Project Manager talked about this presentation is the recommendation to move forward with concept plans which will be block by block design plans.

Ben Weber was last here with Council in October and is excited about moving forward.

Mr. Weber talked about sidewalk enhancements, pedestrian amenities and people experiences of the project.

Mr. Weber went through a power point presentation that highlighted recommended details from block to block. They are recommending more landscaping, lighting, with corner changes for curb extensions at 4’ which is a nice balancing technique.

Councilor Hutchison asked about purpose of curb extensions and Mr. Weber referred to the slide that extends to sidewalk for a shorter pedestrian path and encourages vehicles to take a slower methodical turning approach to not hit pedestrians and provides more space for ADA accessibility as well as providing more space for traffic signals and more decorative elements.

Councilor Hutchison talked about driving today on Main & Third and doesn’t see how they can stay within their turning radius.

Councilor Rodriguez talked about it from a trucking experience and they are currently going up and over the curbs we have now, so are the horse trailers.

Mr. Smith talked about next slide and keeping turning radius the same. They are truly needed for the ADA and brought attention to the current candlesticks on Main and Third Street to keep cars from taking up turning space for the trucks.

Ben Austin, HHPR Principle Engineer talked about refinements made since hearing comments in the fall. Tight corners are a difficult thing and the point is not to make it worse than what it currently is.

Discussions continued regarding all that needs to go into the space that we have regarding pedestrians, trucks and make it better and not worse and it isn't going to be easy. We have to look at how do we incorporate all the transportation needs?

Mr. Forrester talked about assurances that the working team will not bind us into limiting options by asking council to move forward. Mr. Darling responded that this is not locking us into specific designs at this time.

Eric Klann, City Engineer talked about curb extensions always being a contention and asked to break out the curb extension to research further. This should be followed up with a technical memo on how they perform.

Discussions continued regarding designsapes and particular products for design to add to pedestrian experience; artistic bike rack programs for flair; recommended primary street trees; accent trees in larger planters and species which are low maintenance.

Councilor Rodrigues asked about maintenance of those trees and who is responsible and Mr. Smith explained this a city issue and not an ODOT issue and thinks that a city agreement for general landscaping maintenance should be done.

**Councilor Papke made a motion to move forward with design. Motion seconded. No discussion on motion. All in favor, motion carried.**

### **Public Appearances**

Mayor Uffelman read a written comment received from Shawn Smith regarding nuisance properties on Harwood Street and NW Fifth Street.

Mayor Uffelman read a second written comment received from Jennifer M. Van Sambeek and James P. Hallman, also regarding the nuisance properties on Harwood Street and NW Fifth Street.

Mr. Reid explained the judicial remedies the city is seeking at this time and that they have been slowed with the COVID-19 restrictions which has caused the hearing to be extended.

Chief Cummins stated that we should allow current litigation play out and any charges associated with that. Could also look at removing the trash ourselves and that will have costs to the city for

that. Also the other condemned property he would like a couple of weeks to look into with Mr. Reid regarding possible solutions that can be taken.

No comments from council.

Mayor Uffelman stated he would get in touch with the people that submitted comments and provide an update to them.

Mayor Uffelman spoke about masks and that he received a message from Kathy Johnson. Mayor Uffelman said he will talk about this during the Mayor's Message this Friday and encouraged everyone to wear their masks when out in public.

Mayor Uffelman announced Council will be taking a break at about 8:30 P.M.

**Council Business**

**6. Reading of a Proclamation – Older Americans Month – Mayor Uffelman**

Mayor Uffelman read the proclamation into the record.

**7. Sale of Real Porperty – Eric Klann**

Mr. Klann presented the staff report and power point regarding sale of property and highlights of a pedestrian bridge project that could happen with the sale of this property.

Mayor read the public hearing process script into the record.

Mike Warren, Real Estate Agent of Record spoke to value of the property. Figures are where they should be. Last sale was about 70k per acre. Four other properties just let the sale expire at this time. Mr. Warren added that the value of \$150,000 is fair.

Mr. Klann continued with power point that detailed the Barnes Butte Recreation Area pedestrian bridge project.

**Mayor Uffelman opened the public hearing portion of the meeting.**

James Wilson, Public Safety IT Director stated no one is online waiting to testify. Lisa Morgan, City Recorder stated that no written testimony has been received.

**Mayor Uffelman closed the public hearing portion of the meeting.**

Councilor Hutchison asked question regarding contingency of sale with delayed improvements.

Mr. Reid explained the next steps and contingencies.

Discussions continued regarding an upcoming resolution regarding building of bridge; and this being a really good opportunity.

Mayor Uffelman read a sample motion for approval of this.

**Councilor Rodriguez made a motion to authorize staff to move forward with the sale of real property identified as Map No. 1515-12B, Tax Lot 001700, on SW Cessna Drive, Prineville, Oregon, to Marcum & Sons for \$150,000. Motion seconded. No discussion on motion. All in favor, motion carried.**

**Mayor Uffelman called a recess of the meeting at 8:34 P.M. and will resume at 8:45 P.M.**

**Staff Reports and Requests:**

**8. COVID – 19 Local Business Assistance Grant – Steve Forrester**

Mr. Forrester presented the staff report.

Bryan Iverson provided background information on the task force and the objective.

Liz Schuette, Finance Director added that with the decrease in training and meeting expenses that funds are available, however recommends that this comes from the Council contribution fund since there may need to be transfers from the other funds in the future.

Council agreed that it is a good idea.

Councilor Rodriguez asked if she should recuse herself if she might apply for these funds for her business. Mr. Reid responded yes.

**Councilor Papke made a motion to approve a \$14,000 contribution to the COVID-19 Local Business Assistance Grant Program. Motion seconded. No discussion on motion. All in favor, motion carried.**

**9. Manager’s Report**

Steve Forrester, City Manager reported: city projects move forward with social distance; working on steps to reopening with many committees meeting; continuing to report for manageable protocols for re-opening and keeping engaged; Mill Grain sold and is getting cleaned up for future business.

There were no questions.

**Committee Reports**

**10. COVID – 19 Update / Discussion**

No further comments from anyone.

**Ordinances:**

None.

**Resolutions:**

**11. Resolution No. 1434 – Extending State of Emergency – Steve Forrester / Jered Reid**

Mr. Reid provided background information and the importance for keeping this going.

No questions from council.

**Councilor Hutchison made a motion to approve Resolution No. 1434. Motion seconded. No discussion on motion. All in favor, motion carried.**

**12. Resolution No. 1435 – Declaring Prineville Policies During COVID – 19 – Steve Forrester / Jered Reid**

Mr. Reid provided background noting that this is only good as long as the emergency is in effect.

**Councilor Rodriguez made a motion to approve Resolution No. 1435. Motion seconded. No discussion on motion. All in favor, motion carried.**

**13. Resolution No. 1436 – Approving Personal Services Agreement with Dowl – Eric Klann**

Mr. Klann provided the staff report and power point presentation.

Councilor Hutchison asked about piping canal and Mr. Klann replied that OID would be participating.

Discussions continued regarding the design.

**Councilor Jungmann made a motion to approve Resolution No. 1436. Motion seconded. No discussion on motion. All in favor, motion carried.**

**14. Resolution No. 1437 – Second Amendment to Easement Agreement with County – Eric Klann**

Mr. Klann presented the staff report and a graphic illustrating the location of the wells.

There were no questions.



**Councilor Merritt made a motion to approve Resolution No. 1437. Motion seconded. No discussion on motion. All in favor, motion carried.**

**Visitors Appearances and Requests:**

There were no other written comments submitted to read into the record.

**Adjourn**

**Mayor Uffelman read the executive session script into the record and explained that we are adjourning the regular Council meeting and will not come back into open session.**

**Councilor Rodriguez made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.**

Meeting adjourned at 9:30 P.M.

**Motions and Outcomes:**

Motion:	Outcome	Beebe	Hutchison	Jungmann	Merritt	Papke	Rodriguez	Uffelman
Consent Agenda as Presented	PASSED	Y	Y	Y	Y	Y	Y	Y
Move Forward with Streetscape Plan Design – Third Street	PASSED	Y	Y	Y	Y	Y	Y	Y
Authorize staff to move forward with the sale of real property identified as Map No. 1515-12B, Tax Lot 001700, on SW Cessna Drive, Prineville, Oregon, to Marcum & Sons for \$150,000.	PASSED	Y	Y	Y	Y	Y	Y	Y
Approve a \$14,000 contribution to the COVID-19 Local Business Assistance Grant Program	PASSED	Y	Y	Y	Y	Y	-	Y
Resolution No. 1434 – Extending State of Emergency	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1435 – Declaring Prineville Policies During COVID – 19	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1436 – Approving Personal Services Agreement with Dowl	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1437 – Second Amendment to Easement Agreement with County	PASSED	Y	Y	Y	Y	Y	Y	Y
Adjourn Meeting	PASSED	Y	Y	Y	Y	Y	Y	Y

Public Records Disclosure

Under the Oregon public records law, all documents referred to in this session are available at the City’s website. [www.cityofprineville.com](http://www.cityofprineville.com). An electronic copy of the meeting packet is available for download at [www.cityofprineville.com/packets](http://www.cityofprineville.com/packets). A full recording of this meeting is available at [www.cityofprineville.com/meetings](http://www.cityofprineville.com/meetings)

**STAFF REPORT**  
**Request to Exempt from Competition**  
**a Contract for the City of Prineville's Barnes Butte Pedestrian Bridge**

City of Prineville Resolution 1266 authorizes the City Council when acting as the Contract Review Board for the City to exempt from competition the award of a specific contract or class of contracts. The approval of the exemption from competitive bidding must be based upon the record before the City Council that contains the following:

1. The nature of the contract for which the exemption is requested;
2. The estimated contract price;
3. Findings to support the substantial costs savings, enhancement in quality or performance, or other public benefit anticipated by the exemption from competitive solicitation;
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or would otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the solicitation requirements that would otherwise be applicable;
5. A description of the proposed alternative contracting methods to be employed; and
6. The estimated date by which It would be necessary to let the contract.

The Council can approve an exemption of a public improvement contract form competitive solicitation only after a public hearing before the Council following notice by publication in a trade newspaper of general statewide circulation at least 14 days prior to the hearing. At the public hearing the Council needs to offer an opportunity for any interested person to appear and present comment. After the public hearing, the Council is to consider the findings and may approve the exemption as proposed or as modified by the Council after providing the opportunity for public comment.

In the April 29, 2020 edition of the Daily Journal of Commerce and May 5, 2020 edition of the Central Oregonian, a public notice was published setting May 12, 2020 at 6:30 p.m., by telephonic means, as the time and place to comment on the proposal to exempt from the City's contracting regulations a contract with Marcum and Son's, LLC ("Marcum"), for the construction of a pedestrian bridge for the Barnes Butte Recreational Area. Draft findings were contemporaneously made available to the public by publishing the Draft Findings on the City's website.

City Staff recommends that the Council make the following findings as their basis for approval, if they approve, exempting the contract for the construction of a pedestrian bridge for the Barnes Butte Recreational Area and directly contracting with "Marcum":

1. The nature of the contract for which the exemption is requested:
  - Contract for the construction of a pedestrian bridge. This is considered a public improvement project.
2. The estimated contract price is \$150,000.00.

3. Findings to support the substantial costs savings, enhancement in quality or performance, or other public benefit anticipated by the exemption from competitive solicitation:

- The quality of Marcum’s previous work product has been excellent. They have completed their work in a timely manner and at a reasonable cost to the City. Marcum recently completed the reconstruction of the Elm Bridge and a pedestrian bridge over Ochoco Creek. The project was completed on time, under budget with excellent workmanship.
- Marcum is in good standing with regulatory agencies which should make it easier to complete the project without delays.
- Marcum has agreed to the project in consideration of the purchase of real property and therefore no City funds would be expended for the project.

4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or would otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the solicitation requirements that would otherwise be applicable:

- In addition to findings in Section 3 above, Marcum has agreed to the project on the contingency of being sold City property valued at the amount of the Contract. As such, the City is able to utilize surplus property to accomplish a public need, which is required to complete the project based on budget considerations.

5. A description of the proposed alternative contracting methods to be employed:

- Directly contracting with Marcum for the construction of a pedestrian bridge for the Barnes Butte Recreational Area.

6. The estimated date by which it would be necessary to let the contract is September 1, 2021.

After the Public Hearing conducted on May 12, 2020, the Council can consider the findings and may approve the exemption as proposed or as modified by the Council. A Resolution codifying the Council’s findings and decision will be presented at a Council Meeting on May 26, 2020.

**Possible Motion.** I move to exempt from competitive bidding, the Barnes Butte Pedestrian Bridge Project, and directly award the project to Marcum and Son’s, LLC, based on the draft findings presented by staff.

Draft Findings Regarding Exemption from Competition for a Contract for Barnes Butte Pedestrian Bridge

City Staff recommends that the Council make the following findings as their basis for approval, if they approve, an exemption from competition for a contract for the construction of a pedestrian bridge for the Barnes Buttes Recreational Area and directly contracting with Marcum and Son's, LLC ("Marcum").

1. The nature of the contract for which the exemption is requested:
  - Contract for the construction of a pedestrian bridge. This is considered a public improvement project.
2. The estimated contract price is \$150,000.00.
3. Findings to support the substantial costs savings, enhancement in quality or performance, or other public benefit anticipated by the exemption from competitive solicitation:
  - The quality of Marcum's previous work product has been excellent. They have completed their work in a timely manner and at a reasonable cost to the City. Marcum recently completed the reconstruction of the Elm Bridge and a pedestrian bridge over Ochoco Creek. The project was completed on time, under budget with excellent workmanship.
  - Marcum is in good standing with regulatory agencies which should make it easier to complete the project without delays.
  - Marcum has agreed to the project in consideration of the purchase of real property and therefore no City funds would be expended for the project.
4. Findings to support the reason that approval of the request would be unlikely to encourage favoritism or diminish competition for the public contract or would otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the solicitation requirements that would otherwise be applicable:
  - In addition to findings in Section 3 above, Marcum has agreed to the project on the contingency of being sold City property valued at the amount of the Contract. As such, the City is able to utilize surplus property to accomplish a public need, which is required to complete the project based on budget considerations.
5. A description of the proposed alternative contracting methods to be employed:
  - Directly contracting with Marcum for the construction of a pedestrian bridge for the Barnes Butte Recreational Area.

6. The estimated date by which it would be necessary to let the contract is September 1, 2021.

**RESOLUTION NO. 1438**

**A RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY TO MARCUM AND SON’S, LLC**

WHEREAS, the City of Prineville (“City”) owns property within the City of Prineville, County of Crook, described on the Crook County Tax Assessor’s Map as 1515-12B-001700 (“Property”); and

WHEREAS, the City considered it convenient to sell the Property; and

WHEREAS, on April 21, 2020, the City published in the Central Oregonian newspaper the notice required by ORS 221.725 that set April 28, 2020 at 6:30 p.m. as the date and time and provided the phone number and Meeting ID as the place for a public hearing concerning the sale of the Property. The notice also contained a description of the Property, the proposed uses of the Property and the reasons why the City Council considered it convenient to sell the Property; and

WHEREAS, on April 28, 2020, as the City Council meeting beginning at 6:30 p.m. a public hearing concerning the sale of the Property was held and as part of such public hearing the nature of the proposed sale, the general terms of the sale, and the value of the Property were fully disclosed and residents of the City were given an opportunity to present written or oral testimony at the hearing; and

WHEREAS, after the public hearing the City Council authorized City staff to move forward with the sale of the Property to Marcum and Son’s, LLC, and to prepare this Resolution;

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

1. The City of Prineville shall sell the Property to Marcum and Son’s, LLC, for the sale price of \$150,000.00 credit, contingent on Marcum and Son’s, LLC being awarded a contract for the construction of the Barnes Butte Pedestrian Bridge which shall be used as consideration for the Property.
2. The Mayor and City Manager shall execute the necessary documents to complete the sale.

Approved by the City Council this \_\_\_\_ day of May, 2020.

\_\_\_\_\_  
Stephen P. Uffelmann, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

**RESOLUTION NO. 1439  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING A 2020 FUND EXCHANGE AGREEMENT WITH THE  
STATE OF OREGON DEPARTMENT OF TRANSPORTATION (“ODOT”)  
REGARDING STREET REHABILITATION WITHIN THE CITY OF PRINEVILLE**

WHEREAS, The City of Prineville (“City”) has submitted a completed signed Part 1 of the Project Prospectus, or a similar document agreed to by State of Oregon, acting by and through its Department of Transportation, (“ODOT”), outlining the schedule and costs associated with all phases of the 2020 Street Rehabilitation, hereinafter referred to as “Project.”

WHEREAS, City wishes to exchange unspent federal funds for state funds in order to fund the Project using state funding; and

WHEREAS, ODOT has agreed to the exchange of state dollars for federal dollars, City will exchange \$120,512.00 of federal dollars allocated for this Project for \$113,281.28 of state dollars; and

WHEREAS, ODOT has prepared a 2020 Fund Exchange Agreement designated by ODOT as Miscellaneous Contracts and Agreements No. 34166, hereinafter “Agreement,” memorializing the agreement of ODOT and the City regarding reimbursement of the City for the Project up to the maximum amount of state funds committed for the project; 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 attached Agreement is hereby approved and that the Mayor and City Manager are authorized to sign such Agreement on behalf of the City.

Approved by the City Council this \_\_\_\_ day of May, 2020.

\_\_\_\_\_  
Stephen P. Uffelman, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder





# STAFF REPORT

**MEETING DATE:** 5/12/2020

**PREPARED BY:**  
Scott Smith, Street  
Superintendent

**SECTION:** Resolutions

**DEPARTMENT:** Public Works

**CITY GOAL:** Fiscal Responsibility, Provide Quality Municipal Service & Programs

**SUBJECT:** ODOT Fund Exchange Agreement

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## REASON FOR CONSIDERATION:

Through the fund exchange program the City provides documents pertaining to completed transportation projects and then receives \$.94 cents on the dollar in State dollars.

## BACKGROUND:

Staff has applied to ODOT for fund exchange through the (STP) Surface Transportation Program. This program provides funding through the Federal gas tax program to states and local governments which can be used strictly for transportation related expenses. The City of Prineville applied via *project prospectus* to access the 2020 allocation. The application has been approved and a 2020 Fund Exchange Agreement,(No.034166) was issued.

The City of Prineville proposed and will receive approval for partial reimbursement on the following project:

<b>2020 Street Rehabilitation Project</b>	<b>\$714,220.000</b>
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## FISCAL IMPACT:

Of the \$120,512.00 Federal dollars the State received, the City of Prineville Transportation Department will receive \$ 113,281.28. These funds will be deposited into the Transportation Departments line item 10-33103-3 (STP fund exchange program). Staff had budgeted \$110,000.00 revenue for this program.

## RECOMMENDATION:

Staff recommends that the Council authorize signature of the 2020 Fund Exchange Agreement No. 34116 in the amount of \$113,281.28

2020 FUND EXCHANGE AGREEMENT  
2020 Street Rehabilitation  
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" or "ODOT"; 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](#), [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.

**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. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the 2020 Street Rehabilitation, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2020 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

4. Based on this ratio, Agency wishes to trade \$120,512.00 federal funds for \$113,281.28 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) years from that date unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:

- a. The federal funds transferred to State may be used by State at its discretion.
- b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
  - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
  - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
- c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
- d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$113,281.28. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
- e. 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.
- f. Agency, and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- g. 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.
- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal

laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.

- i. Agency shall submit invoices to State on a monthly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$113,281.28, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers 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 subcontractors complies with these requirements.
- l. This Agreement may be terminated by either party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
  - i. 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.
  - ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
    - A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- B. 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 either Party is prohibited from paying for such work from the planned funding source.
- iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- m. State and Agency 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.

**7. Americans with Disabilities Act Compliance:**

- a. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA").

Agency may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- b. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
- c. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.

- d. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
    - i. Pedestrian access is maintained as required by the ADA,
    - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
    - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
    - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
  - e. Maintenance obligations in this section shall survive termination of this Agreement.
8. 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 this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  9. 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.
  10. 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.
  11. 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.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on July 20, 2017, as a part of the 2018-2021 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on April 9, 2020.

**Signature Page to Follow**

**City of Prineville**, by and through its elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

Scott Smith, Street Supervisor  
1233 NW Lamonta Road  
Prineville, Oregon 97754  
(541) 447-7844  
ssmith@cityofprineville.com

**State Contact:**

Paul Singer, Transportation Project  
Manager  
63055 N. Highway 97, Building M  
Bend, Oregon 97701  
(541) 410-2993  
paul.singer@odot.state.or.us

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

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_ n/a  
Assistant Attorney General (If over \$150,000)

Date \_\_\_\_\_ n/a