



Location: City Hall – Council Chambers
Date: July 13, 2021
Time: 6:30 PM

City Council Meeting Agenda

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

Call to Order

Flag Salute

Additions to Agenda

Consent Agenda

1. Regular Meeting Brief 6-22-2021

Visitors, Appearances and Requests

2. Republic Disposal Update - Susan Baker
3. HORSES on the Ranch Presentation - Darcy Bedortha

Council Business

Staff Reports and Requests

4. Supplemental Budget Clerical Correction - Liz Schuette / Lori Hooper
5. City Manager's Report - Steve Forrester

Committee Reports

Ordinances

6. Ordinance No. 1265 - Amending Chapter 30, 90 & 153 of the Prineville Code for Compliance with ADA Language **(SECOND PRESENTATION)** - Josh Smith
7. Ordinance No. 1266 - Amending Chapter 153 of the Code to Update Review Process for ADU's and Partitions **(SECOND PRESENTATION)** - Josh Smith
8. Ordinance No. 1267 - Granting an Electric Utility Franchise and General Utility Easement to PacificCorp **(FIRST PRESENTATION)** - Steve Forrester

Resolutions

9. Resolution No. 1498 - Authorizing the City to Enter Into an IGA with ODOT for Tom McCall Roundabout Artwork - Scott Smith



[10.](#) Resolution No. 1499 - Declaring the Necessity and Intent To Appropriate Certain Described Real Property and Authorizing Epic Land Solutions Inc to Negotiate for Its Acquisition - Eric Klann / Scott Smith

Visitors, Appearances and Requests

Adjourn

Executive Session

The Executive Sessions are being held pursuant to ORS 192.660 (2)(f) – Consider information exempt from disclosure by law, including written advise from attorney **and** ORS 192.660 (2)(i) & 192.660 (8) – Evaluation performance of an officer, employee **and** 192.660 (2)(e) – Real estate negotiations **and** ORS 192.660 (2)(h) – Regarding current litigation or litigation that is more likely than not to be filed

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
June 22, 2021

Council Members Present:

Jason Beebe
Patricia Jungmann
Gail Merritt
Ray Law

Steve Uffelman
Janet Hutchison

Council Members Absent

Jeff Papke

Additions to the Agenda

Mayor Beebe spoke to the audience explaining how the meeting was going to be conducted and that everyone would have a chance to speak during the first and second visitors and appearances portion on the agenda. The first visitors and appearances would be limited to thirty (30) minutes so city business could be conducted. Each person would have three (3) minutes to speak. The remainder of visitors wishing to speak can do so in the second visitors and appearances section.

Consent Agenda

1. Regular Meeting Brief 6-8-2021

Councilor Merritt made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.

Visitors, Appearances and Requests:

Public Appearances

Six different Prineville residents took turns speaking. Topics ranged from second amendment rights, anger for comments made by councilors at a meeting on May 25th, being in favor of the Pride Month proclamation, hate experienced for the LGBTQ community, having a right to be here, and losing patience and respect for those who are still bowing down to Kate Brown's policies.

Council Business

2. Reading of Proclamation – 2021 The Re-Ride Year of the Cowboy – Mayor Beebe

Mayor Beebe read the proclamation into the record. Pat Goehring, Crooked River Round Up Board member accepted the proclamation.

3. Reading of Proclamation – June Pride Month – Mayor Beebe

Mayor Beebe read the proclamation into the record. Robyn Loxley accepted the proclamation.

4. Intent to Award 2021 Street Rehabilitation Project – Scott Smith

Scott Smith, Street Supervisor presented the staff report that highlighted where the work would be performed.

There were no questions.

Councilor Uffelman made a motion to approve the intent to award the 2021 Street Rehabilitation project to Tri-County Paving of Redmond, Oregon in the amount of \$522,746.00. Motion seconded. No discussion on motion. All in favor, motion carried.

Staff Reports and Requests:

5. Manager’s Report – Steve Forrester

Mr. Forrester reported: he is happy we could to the proclamation for re-ride and gave a run down on rodeo events. The financial standing for the city is very good and the budget is one of the best yet which will be effective on July 1st. Meadow Lakes finished strong and the new carts are to arrive in the fall. The railroad is doing good. The airport’s new approach is in the final stages and re-opened last week and is very busy. The Police Department will be planning an open house. Public Works is very busy. The Aquifer Storage and Recovery (ASR) project is completed except for one critical component part that has had a delayed delivery.

There were questions regarding the chlorine shortage and how the city is doing with that.

Pat Goehring, Public Works Superintendent came up and gave an update. Mr. Goehring explained that we have approximately four months’ worth of supply. Wastewater runs completely on chlorine gas and the chlorine plant in Washington is expected to come on- line June 28th.

There were no further questions.

Committee Reports

Mayor Beebe gave a Central Oregon Cities Organization (COCO) update.

Councilor Uffelman provided a Community Renewable Energy (CREA) update and that there is the potential removal of dams which would cause a shortage of electricity. They are also looking at a nuclear plant in Wyoming.

Councilor Uffelman continued with an Advisory ODOT Committee update, and League of Oregon Cities Board update.

There were no other committee reports.

Ordinances:

6. Ordinance No. 1265 – Amending Chapter 30, 90 & 153 of the Prineville Code for Compliance with ADA Language (FIRST PRESENTATION) – Josh Smith

Josh Smith, Planning Director provided the back ground on this and the next ordinance, explaining that the public hearing was held at the last meeting.

There were no questions.

Councilor Merritt made motion to approve Ordinance No 1265 for its first presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

7. Ordinance No. 1266 – Amending Chapter 153 of the Code to Update Review Process for ADU’s and Partitions (FIRST PRESENTATION) – Josh Smith

Mr. Smith had nothing more to add after going over the background for the last ordinance.

Councilor Hutchison made a motion to approve Ordinance No. 1266 for its first presentation. Motion seconded. No discussion on motion. All in favor, motion carried.

Jered Reid, City Attorney went over the process for the upcoming public hearings, explaining that comments are limited to the resolution requiring a public hearing.

Resolutions:

8. Resolution No. 1490 – Adopting a Supplemental Budget FY 2020-2021 (PUBLIC HEARING) – Liz Schuette

Lori Hooper, Finance Manager went through the items covered in the resolution and the purpose for the adjustments.

There were no questions.

Mayor Beebe opened the public hearing portion of the meeting.

No one came forward, no written comments were received and no one was on the line.

Mayor Beebe closed the public hearing portion of the meeting.

Councilor Uffelman made motion to approve Resolution No. 1490. Motion seconded. No discussion on motion. All in favor, motion carried.

9. Resolution No 1491 – Making Appropriation Adjustments to FY 2020-2021 – Lori Hooper

Ms. Hooper went through each of the adjustments.

There were no questions.

Councilor Merritt made a motion to approve Resolution No. 1491. Motion seconded. No discussion on motion. All in favor, motion carried.

10. Resolution No. 1492 – Adopting Budget and Making Appropriations for BN 2022-2023 – Liz Schuette

Liz Schuette, Finance Director presented the staff report.

There were no questions.

Councilor Hutchison made a motion to approve Resolution No. 1492. Motion seconded. No discussion on motion. All in favor, motion carried.

11. Resolution No. 1493 – Imposing and Categorizing Taxes for the 2021-2022 Fiscal Year of the BN 2023 Budget – Liz Schuette

Mrs. Schuette presented the staff report.

There were no questions.

Councilor Uffelman made a motion to approve Resolution No. 1493. Motion seconded. No discussion on motion. All in favor, motion carried.

12. Resolution No. 1494 – Imposing and Categorizing Taxes for the 2022-2023 Fiscal Year of the BN 2023 Budget – Liz Schuette

Mrs. Schuette explained that this is the same resolution as the last one, but is for the second year of the biennial budget.

There were no questions.

Councilor Jungmann made a motion to approve Resolution No. 1494. Motion seconded. No discussion on motion. All in favor, motion carried.

13. Resolution No. 1495 – Declaring the City of Prineville’s Election to Receive State Revenue Sharing (PUBLIC HEARING) – Liz Schuette

Mrs. Schuette presented the staff report.

There were no questions.

Mayor Beebe opened the public hearing portion of the meeting.

No one came forward, no written comments were received and no one was on the line.

Mayor Beebe closed the public hearing portion of the meeting.

Councilor Hutchison made a motion to approve Resolution No. 1495. Motion seconded. No discussion on motion. All in favor, motion carried.

14. Resolution No. 1496 – Establishing Fees and Charges for the City of Prineville FY 2021-2022 (PUBLIC HEARING) – Liz Schuette

Mrs. Schuette presented the staff report and explained that there was a comparison rate schedule distributed to council. This resolution would take effect on July 1, 2021.

There were no questions.

Mayor Beebe opened the public hearing portion of the meeting.

No one came forward, no written comments were received and no one was on the line.

Mayor Beebe closed the public hearing portion of the meeting.

Councilor Merritt made a motion to approve Resolution No. 1496. Motion seconded. No discussion on motion. All in favor, motion carried.

15. Resolution No. 1497 – Authorizing Approval of a Grant Exchange Agreement with ODOT – Jered Reid

Mr. Reid talked about the scrivener’s error and provided the background information explaining that this is for the Cascade East Transit (CET) funding for Central Oregon Intergovernmental Council (COIC).

There were no questions.

Councilor Uffelman made a motion to approve Resolution No. 1497 as amended. Motion seconded. No discussion on motion. All in favor, motion carried.

Visitors Appearances and Requests:

Nine more Prineville residents had an opportunity to speak to Council. Some statements made covered topics such as shots are a personal choice, not having trust in government, support of the Pride proclamation and all human rights, the significance of the Pride proclamation, any apology for previously made comments will not make a difference and should step down, understanding one another and not being so hateful, and the need to respect all views and everyone should feel safe.

No one else came forward.

Mayor Beebe thanked everyone for coming this evening to our first open meeting in a year and a half.

Adjourn

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

Meeting adjourned at 8:14 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	Y	-	Y	Y	Y	-	Y
Ordinance No. 1265 – Amending Chapter 30, 90 & 153 of the Prineville Code for Compliance with ADA Language (FIRST PRESENTATION)	PASSED	Y	Y	Y	Y	Y	-	Y
Ordinance No. 1266 – Amending Chapter 153 of the Code to Update Review Process for ADU’s and Partitions (FIRST PRESENTATION)	PASSED	Y	Y	Y	Y	Y	-	Y
Resolution No. 1490 – Adopting a Supplemental Budget FY 2020-2021 (PUBLIC HEARING)	PASSED	Y	Y	Y	Y	Y	-	Y
Resolution No 1491 – Making Appropriation Adjustment to FY 2020-2021	PASSED	Y	Y	Y	Y	Y	-	Y
Resolution No. 1492 – Adopting Budget and Making Appropriations for BN 2022-2023	PASSED	Y	Y	Y	Y	Y	-	Y
Resolution No. 1493 – Imposing and Categorizing Taxes for the 2021-2022 Fiscal Year of the BN 2023 Budget	PASSES	Y	Y	Y	Y	Y	-	Y
Resolution No. 1494 – Imposing and Categorizing Taxes for the 2022-2023 Fiscal Year of the BN 2023 Budget	PASSES	Y	Y	Y	Y	Y	-	Y
Resolution No. 1495 – Declaring the City of Prineville’s Election to Receive State Revenue Sharing (PUBLIC HEARING)	PASSES	Y	Y	Y	Y	Y	-	Y
Resolution No. 1496 – Establishing Fees and Charges for the City of Prineville FY 2021-2022 (PUBLIC HEARING)	PASSES	Y	Y	Y	Y	Y	-	Y
Resolution No. 1497 – Authorizing Approval of a Grant Exchange Agreement with ODOT	PASSES	Y	Y	Y	Y	Y	-	Y
Adjourn Meeting	PASSED	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. An electronic copy of the meeting packet is available for download at www.cityofprineville.com/packets. A full recording of this meeting is available at www.cityofprineville.com/meetings



STAFF REPORT

MEETING DATE:	7/13/2021	PREPARED BY:	Lori Hooper
SECTION:	Staff Reports and Requests	DEPARTMENT:	Finance Department
CITY GOAL:	Fiscal Responsibility, Transparency and Effective Communication		
SUBJECT:	Correction to the Supplemental Budget		

REASON FOR CONSIDERATION: Clerical Correction

BACKGROUND: Resolution 1490 adopted on the 22nd day of June, 2021 needs a correction to the revenue portion of the adjustment. This change does not affect the expenditure amounts, only an unrecognized addition to the revenue estimated projection for the Wastewater SDC Fund. The numbers were considered as part of the adjustment, but were left out of the resolution. The total resources balance with the total expenditures.

FISCAL IMPACT: There is no fiscal impact, the total revised expenditure and resource listed on Resolution 1490 has not changed.

RECOMMENDATION: No action is required from Council. The action required is from the budget officer to make the correction, inform the Council in writing, and inform the governing body at the next regularly scheduled meeting concerning the needed correction.

Below is a snip out of Oregon budget law on how to make this correction:

If a correctable error occurs, the budget officer corrects the error as follows: At the first regularly scheduled meeting of the governing body after the error is discovered, the budget officer informs the governing body in writing of the error. The budget officer also corrects the error in testimony before the governing body. If the error relates to a tax amount already certified to the assessor, the budget officer notifies the assessor in writing that an error occurred and submits a corrected tax certification document. Corrected tax certifications must be submitted to the assessor before October 1.

Original adjustment to the Wastewater SDC Fund:

Wastewater SDC Fund

Expenditures (proposed changes)		
Materials and Services	\$	58,000
Capital outlay	\$	1,620,000
Transfers	\$	1,855,000
Contingency	\$	109,928
Revised Total Fund Expenditures	\$	3,642,928
Resources (proposed changes)		
System development fees	\$	460,000
Revised Total Fund Resources	\$	3,642,928

To adjust expenditures to cover additional costs in materials and services associated with consulting costs for the water reuse project and to allow for additional costs in capital outlay for the sewer portion of the 10th and Main St. project and to adjust transfers for the sewer portion of the ASR project and increase transfers to the administrative funds to capture the five percent administrative fee for additional dollars collected. These costs will be covered by additional SDC's collected not anticipated at budget time and contingency.

Corrected adjustment to the Wastewater SDC Fund:

Wastewater SDC Fund

Expenditures (proposed changes)		
Materials and Services	\$	58,000
Capital outlay	\$	1,620,000
Transfers	\$	1,855,000
Contingency	\$	109,928
Revised Total Fund Expenditures	\$	3,642,928
Resources (proposed changes)		
System development fees	\$	460,000
Other revenue	\$	36,936
Revised Total Fund Resources	\$	3,642,928

Wastewater SDC Fund

	Adjusted Budget Per Res. No. 1445	Supplemental Budget Per Res. No. 1490
Resources		
Beginning Fund Balance	\$ 3,090,992	\$ 3,090,992
Current year Resources		
Interest	\$ 55,000	\$ 55,000
Other Revenue	-	36,936
System development charges	235,400	460,000
Total Current Year Resources	\$ 290,400	\$ 551,936
Total Resources	\$ 3,381,392	\$ 3,642,928
Expenditures		
Material and services	\$ 25,000	\$ 58,000
Capital outlay		
Improvements	1,540,000	1,620,000
Transfers	1,703,800	1,855,000
Contingency	112,592	109,928
Total expenditures	\$ 3,381,392	\$ 3,642,928

ORDINANCE NO. 1265

AN ORDINANCE AMENDING CHAPTER 30, 90 & 153 OF THE CODE OF PRINEVILLE (“CODE”) TO UPDATE SECTIONS FOR COMPLIANCE WITH ADA LANGUAGE.

WHEREAS, City of Prineville (“City”) staff compiled amendments to the City’s land use code (Chapter 153 of the Code) for review by the City Planning Commission during a workshop on April 20, 2021; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was submitted to the Department of Land Conservation and Development and published 10 days prior to the initial public hearing scheduled for May 18, 2021; and

WHEREAS, on May 18, 2021, the City Planning Commission held a public hearing, consented to the amendments, and recommended the City Council approve the proposed land use amendments as shown on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was published 10 days prior to the City Council hearing of a legislative change scheduled for June 8, 2021; and

WHEREAS, on June 8, 2021 the City Council held a public hearing on the amendments shown on Exhibit A; which included amendments to Chapters 30 and 90 not subject to Planning Commission review and notice.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AS FOLLOWS:

1. That Chapters 30, 90 & 153 of the Code of Prineville are amended as shown on Exhibit A.
2. That this ordinance become effective thirty (30) days after its passage.

Presented for the first time at a regular meeting of the City Council held on June 22, 2021, and the City Council finally enacted the foregoing ordinance this ____ day of July, 2021.

Rodney J Beebe
Mayor

ATTEST:

Lisa Morgan, City Recorder

**CHAPTER 30: CITY COUNCIL, CHAPTERS 90 ANIMALS,
153: LAND DEVELOPMENT CODE
Updating sections for compliance with ADA language.**

Section 30.10(A) & (B) shall be amended as follows:

30.10 PUBLIC MEMBERS ADDRESSING COUNCIL

(A) Any public member desiring to address the Council shall wait to be recognized by the presiding officer. After recognition, the person’s name and address shall be stated for the record and the remarks shall be limited to the question under discussion. All remarks and questions shall be addressed to the presiding officer and not to any individual Council member, staff member or other person. No person shall enter into any discussion without being recognized by the presiding officer.

(B) Any public member addressing the Council shall be limited to five minutes unless further time is granted by the presiding officer or an exception is made for persons with disabilities. No public member shall be allowed to speak more than once upon any one subject until every other public member choosing to speak thereon has spoken.

...

Section 90.02(B) shall be amended as follows:

90.02 PROHIBITIONS.

No person, while on property owned by, leased to, or controlled by the City of Prineville, shall possess or be in control of a dog that meets any of the following conditions:

...

(B) Is not controlled by a leash adequate for the dog; of less than 10 feet in length. Exceptions include service animals and designated off-leash areas.

...

Section 153.083(A)(5) shall be amended as follows:

153.083 STANDARDS FOR SPECIFIC USES.

(A) Residential care facility or residential care home. When permitted as a conditional use, the facilities shall be subject to the following conditions and limitations:

...

(5) Appropriate facilities and access for people with disabilities shall be provided and/or installed as recommended by the appropriate local, county or state officials.

...

Section 153.093 (B), (C) & (E)(1) shall be amended as follows:**153.093 OUTDOOR MERCHANDISING.**

...

(B) Prohibition. Except as otherwise approved by the reviewing authority, all commercial uses shall be conducted entirely within a completely enclosed building, except that the outdoor storage display, sale or rental of merchandise or services may be permitted where the standards of division (D) of this section are met.

(C) The following uses and activities, subject to applicable conditions and division (E) of this section, are exempt from the prohibition set forth in division (B) of this section.

- (1) The sale of living plants and plant materials.
- (2) Outdoor seating common to a use permitted within the applicable zone.
- (3) Christmas tree sales lot.
- (4) Vehicle charging stations and/or dispensing fuel at a service stations.
- (5) Newspaper vending.
- (6) Sales of food items, arts and handicrafts by a nonprofit organization.
- (7) Automatic teller machines, subject to the design review requirements set

forth in this subchapter.

(8) Outdoor displays of merchandise common to a use permitted within the applicable zone such as retail store fronts, automobile sales, boat sales, building materials, farm and other heavy equipment, hardware and the like, when such is approved as an integral component of an approved use within the applicable zone.

(9) Outdoor sales of goods and materials as a part of a business community sidewalk, patio or other promotional sales event.

(10) Community outdoor sales events and activities in association with a community event such as a 4th of July celebration, fair, rodeo, centennial and the like.

(11) Garage, patio and yard sales on an individual or group basis, including community sponsored flea or farmers markets.

(12) Outdoor sales or goods and materials authorized pursuant to Ch. 110.

...

(E) The following additional requirements are applicable to certain types of outdoor merchandising.

(1) Displays or merchandise placed on a public or private sidewalk, walkway or path shall be located so that the use of the area by people with disabilities is not impeded. This standard shall be met by maintaining the minimum requirements of the Adults with Disabilities Act (ADA) as amended.

...

Section 153.095(F)(4)(a)(b) & (5) shall be amended as follows:

153.095 MANUFACTURED HOMES; MOBILE HOMES; RV'S.

(F) Recreational vehicles and Manufactured homes: temporary residence for care of an elderly or infirm person; or person with disabilities.

...

(4) As a temporary special use permit in every zone in which residential uses are permitted, the City Planning Official, as a type I conditional use permit, may approve 1 manufactured home or RV in conjunction with a primary dwelling unit with the following findings and limitations.

(a) That the unit is necessary to give care for or provide custody of an elderly or infirm person; or person with disabilities, who a medical doctor certifies is in need of this special kind of care or custody.

(b) The applicant and permit holder is the owner and resident of the primary dwelling and is the care provider for the person for which the special use permit is granted.

...

(5) A temporary special use permit granted under this subsection shall be null and void when the elderly or infirm person; or person with disabilities who is the subject of the permit moves to another residence or is absent from the residence for more than 120 days, or leaves the residence with no likelihood of returning. Exception to the 120-day limit may be approved because of extraordinary circumstances such as extended hospitalization, but in any case, the subject unit shall not be occupied by any other person(s) other than originally intended and approved for.

ORDINANCE NO. 1266

AN ORDINANCE AMENDING CHAPTER 153 OF THE CODE OF PRINEVILLE (“CODE”) TO UPDATE REVIEW PROCESS FOR ADUs & PARTITIONS.

WHEREAS, City of Prineville (“City”) staff compiled amendments to the City’s land use code (Chapter 153 of the Code) for review by the City Planning Commission during a workshop on April 20, 2021; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was submitted to the Department of Land Conservation and Development and published 10 days prior to the initial public hearing scheduled for May 18, 2021; and

WHEREAS, on May 18, 2021, the City Planning Commission held a public hearing, consented to the amendments, and recommended the City Council approve the proposed land use amendments as shown on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was published 10 days prior to the City Council hearing of a legislative change scheduled for June 8, 2021; and

WHEREAS, on June 8, 2021 the City Council held a public hearing on the amendments shown on Exhibit A.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AS FOLLOWS:

1. That Chapters 153 of the Code of Prineville are amended as shown on Exhibit A.
2. That this ordinance become effective thirty (30) days after its passage.

Presented for the first time at a regular meeting of the City Council held on June 22, 2021, and the City Council finally enacted the foregoing ordinance this ____ day of July, 2021.

Rodney J Beebe
Mayor

ATTEST:

Lisa Morgan, City Recorder

CHAPTER 153: LAND DEVELOPMENT CODE
Updating review process for ADUs & Partitions.

Section 153.035 shall be amended as follows:

153.035 RESIDENTIAL USE TABLE

...

RESIDENTIAL / ACCESSORY USES

...

Accessory Dwelling	0	0	0	0	0	153.080
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...

Section 153.160(D) & (E) shall be amended as follows & Section (I) shall be deleted:

153.160 LAND PARTITIONING

...

(D) Exemption. Partitions resulting in the following are not subject to the land partitioning requirements or applicable zoning regulations set forth by this chapter. However a final plat map shall be required in accordance with State law.

(1) The partitioning of property for the purpose of transferring property or properties to a public or semi-public agency for a public road, street, railroad, electric substation, canal, utility right-of-way, public park, school, recreation facility, trail, bikeway, natural area or other similar public purpose.

(E) Filing procedures and requirements. Any person proposing a land partitioning, or the authorized agent or representative thereof, shall prepare and submit a copy of the tentative plan as specified under (E)(4) of this section, together with a digital copy and the prescribed application form and required filing fee, to the City Planning Official.

(1) Minor partitioning. The reviewing authority shall take action to either approve the application as submitted, approve with modifications or conditions, deny the application, or refer the subject application to the Planning Commission for review and action thereon. Review of a minor partition shall follow the procedures and policies for a land use action set forth in sections 153.250 et seq.

(2) Major partitioning. With an application and tentative plan for a major partitioning, the application shall be referred to the Planning Commission for review and action if 1 or more objections are received in writing during the required 14 day notice period for a land use action. The Planning Commission may approve the application as submitted, approve with modifications or conditions or deny the application.

(3) Series partitioning. Any division of land resulting in a series partitioning may be referred to the Planning Commission for review and approval. Applications for any series partitioning shall be made and processed in the same manner as a minor partitioning. Approval requirements shall be the same as for any partitioning, however, the reviewing authority shall deny any such series partitioning when it is determined that the partitioning is done for the purpose of circumventing applicable subdivision regulations.

...

ORDINANCE NO. 1267

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND
GENERAL UTILITY EASEMENT TO PACIFICORP**

Whereas, PacifiCorp, dba Pacific Power (“Franchisee”), is a regulated public utility that provides electric power and energy to the citizens of the City of Prineville (“City”) and other surrounding areas; and

Whereas, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City; and

Whereas, the City desires to set forth the terms and conditions by which Franchisee shall use the public ways of the City;

Now, Therefore, the people of the City of Prineville ordain as follows:

Section 1. Definitions. Any term defined in the Prineville City Code and not in this Ordinance shall have the meaning provided by the Prineville City Code definition.

“Facilities” means Franchisee’s electrical transmission, distribution, and communication facilities, including lines, cables, conduit, poles, towers, wires, guys and anchors, vaults and boxes, transformers, fixtures, electric vehicle charging stations and other physical components of Franchisee’s electric power distribution system located within Right-of-Way or Public Place within the City by virtue of the rights granted under this Ordinance or any predecessor franchise agreement.

“Gross Revenues” means any revenue received from sources within the City limits by the Franchisee; including revenue from the use, rental or lease of operating facilities of the Franchisee and from the provisions of services by the Franchisee.

“Right-of-Way” means property owned by the City, or dedicated to the public or the City, for transportation purposes, including public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, and places used or intended to be used by the general public for travel as the same now or may hereafter exist.

“Public Place” includes any City-owned property that is open to the public and that is not a Right-of-Way and includes public squares and parks. Public Places do not include any public squares and parks owned by the City of Prineville.

Section 2. Grant of Authority. City grants to Franchisee the right to construct, install, maintain, repair, replace, upgrade and operate Facilities over, in, on, and under (i) the present and future Right-of-Way and (ii) existing Public Places currently in use by Franchisee, in each case, for the purpose of providing electric power utility service on the terms stated in this Ordinance. For the avoidance of doubt, except as may otherwise be agreed by Franchisee and

City, Franchisee may not place new Facilities in any Public Places that are not in use by Franchisee as of the effective date of this Franchise. This franchise is not exclusive, and City reserves the right to grant a similar franchise to any other person or entity. This Franchise is subject to prior rights, interests, agreements, City codes, permits, easements or licenses granted by the City, and to the City's and public's right to use and administer rights-of-way.

Section 3. Compliance with Laws, Rules, and Regulations. Franchisee shall comply with all City laws and regulations (including the Prineville City Code, other provisions or revisions of the Prineville City Code, and City ordinances, regulations, and standards and specifications and as directed by the City Engineer in accordance with the Prineville City Code) in constructing, installing, maintaining, repairing, replacing, upgrading, and operating its Facilities in the Right-of-Way and in Public Places for which Franchisee is granted permission to occupy under this Ordinance. Permits must be obtained prior to installation or construction of Facilities in Public Places. Where protection of the public health or safety or outage restoration requires emergency work to be performed, Franchisee may undertake work immediately to repair a break or restore service without a permit but must inform the City as soon as practical after the work is commenced, and, at the request of City, Franchisee shall submit documentation and/or a permit application in such form as is reasonably satisfactory to City describing the emergency work so performed. All Facilities shall be installed and at all times maintained by Franchisee in accordance with the National Electrical Safety Code, ANSI Standard C2 and any electric utility industry standards. The precise location of lines shall be determined through the permitting process.

Section 4. Franchisee Liability, Indemnification of City and Insurance.

A. Franchisee shall conduct its operations under this Franchise, including construction, installation, maintenance, repair, replacement, upgrade and operation of its Facilities, in a safe and workmanlike manner and all lawful governmental regulations.

B. Franchisee shall defend, indemnify and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury (including death) to persons or property caused by or resulting from any wrongful or negligent act or omission of Franchisee, its agents or employees in exercising its rights and obligations under this Ordinance. This indemnification required shall not apply to claims to the extent caused by the negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. Franchisee agrees that it is not an agent of the City and is not entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

C. Franchisee shall purchase and maintain at Franchisee's expense, Commercial General Liability and Commercial Automobile insurance covering bodily injury and property damage in an amount of \$5 million per occurrence and \$10 million in the aggregate. The insurance policy obtained by Franchisee shall be primary and non-contributory. Franchisee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Franchisee or its subcontractors and their officials, agents and employees in performance of this Ordinance,

even if not covered by, or in excess insurance limits. This insurance requirement may be met in part by self-insurance.

D. Franchisee shall obtain and maintain Workers' Compensation insurance required by ORS chapter 656. Franchisee shall ensure that each of its contractors obtains and maintains workers' compensation insurance and obtains proof of the coverage before performing work.

E. Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

F. As evidence of the insurance coverage required by this Franchise, Franchisee shall provide proof of coverage required by acceptable Certificate of Insurance and Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City, except if such cancellation is due to failure to pay premiums in which case 10 days' prior written notice of cancellation is given to City. The Certificate and Endorsement shall also state the deductible or self-insured retention level. This Ordinance shall not be in effect until the required certificates and signed endorsements have been received and approved by City. Renewal certificates and endorsements will be sent to City prior to coverage expiration. The City may terminate the Franchise for failure to maintain the required insurance.

G. Franchisee grants Waiver of Subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance recovery shall be solely with its insurance carrier, and also grants to City on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under the insurance coverage.

Section 5. Construction and Conditions on Right-of-Way Occupancy

A. Use. Except in the case of emergency work described in Section 3 above, all work involving street or sidewalk cuts or protracted lane closures in the City Right-of-Way will require a permit prior to any work being started, which permit may not be unreasonably withheld, conditioned, or delayed, and will require a traffic plan that is fully compliant with the City of Prineville Design Standards and Specifications.

B. Reserved.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Franchisee, Franchisee shall, at its own cost and expense and in compliance with the City's pavement restoration policy and standards and specifications, promptly replace and restore the disturbed paving, sidewalk, driveway, landscaping or surface of any street or alley, as applicable, the condition it was in prior to the disturbance. Franchisee warrants all restoration work for a period of one-year from completion of the work. If Franchisee fails to make restoration as required by this section or if the restoration fails within the one-year warranty

period, City may, if Franchisee fails to make necessary repairs within a reasonable timeframe following written notice from City to Franchisee, cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee shall comply with the requirements of Oregon Utility Notification Law and implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities as follows:

1. If the removal or relocation of Facilities is caused directly by development of private property or any project sponsored or funded by a third party (including but not limited to any governmental agency or instrumentality other than the City) and the removal or relocation of Facilities occurs within the area to be developed or is made for the benefit or convenience of a third-party, Franchisee may charge the expense of removal or relocation of Facilities to the developer or other third-party, including the cost of acquiring private rights, permits, and other associated costs that result from the relocation. Franchisee shall be solely responsible for enforcing collection from the developer or other third-party, but Franchisee shall not be required to remove or relocate Facilities for the benefit of third-parties until it receives payment for the removal or relocation. For the purpose of this paragraph, the removal or relocation of Facilities shall be considered “caused directly” by a private development or third party project if, for example, the removal or relocation is necessary to enable the developer or third party to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation, or other requirement applicable to the project.

2. If Section 5.E.1 does not apply, and subject to Section 5.G below, if the removal or relocation of Facilities is required by City for a City-funded project that serves a public purpose (e.g., a street widening project undertaken independently of a project described in Section 5.E.1), Franchisee will remove or relocate its facilities at Franchisee’s expense within a reasonable time after notification by City and delivery of the City’s 100% complete design plan; provided that if the City requires the subsequent relocation of the same Facilities within five (5) years of the date of the last relocation, City shall bear the expense of the subsequent relocation; and provided further the removal and/or relocation of Facilities that are used to serve City as a customer of Franchisee shall be subject to terms of Franchisee’s tariffs and not this Section 5.E.2. City will make a reasonable effort to provide Franchisee with an alternate location for its Facilities within the Right-of-Way or Public Places. The City will make every effort to coordinate with the Franchisee during project development to reduce or eliminate conflicts with existing facilities, including coordinating and communication with Franchisee and interested parties regarding the relocation project.

F. Right-of-Way Vacation; Transfer of Property in Right-of-Way or Public Place; Relocations into Right-of-Way.

1. City shall retain public utility easements or otherwise require the petitioner of the vacation to grant an easement or obtain an easement in such form and in a location acceptable to

Franchisee if City vacates any public Right-of-Way or Public Place where Franchisee has facilities. If Franchisee's Facilities must be relocated from a vacated public right-of-way, the petitioner of the vacation will bear the expense of moving the Facilities and obtaining alternate rights, permits or easements.

2. In the event City conveys, assigns or transfers title to any property within any Right-of-Way or Public Place in which Franchisee has Facilities, as part of said conveyance, City shall either (i) secure from such transferee an easement or other rights allowing for such Facilities to remain in place in a form acceptable to Franchisee or, (ii) if such Facilities are to be relocated, (x) City shall obtain an easement or other rights in such form and in such location as are acceptable to Franchisee, and (y) the expense of relocating the Facilities and obtaining such easement or other rights shall be borne by City.

G. Underground Conversions. Franchisee shall remove and replace overhead Facilities with underground Facilities at the request of the City. Cost responsibility shall be allocated in accordance with all applicable Oregon Administrative Rules and a schedule agreed upon by the City and Franchisee. The City shall require that each customer served from the existing overhead Facilities shall make all facility changes to the customer's premises in accordance with Franchisee's policies and standards necessary to receive service from the underground facilities as soon as they become available.

H. Vegetation Management. Franchisee or its assignee may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with Franchisee's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Franchisee, when necessary and with the approval of the owner of the property on which they be located, from cutting down and removing any trees which overhang streets.

Section 6. Transfer of Franchise. Franchisee shall not sell, assign, dispose of, lease, or transfer in any manner whatsoever any interest in this Ordinance, without written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event the City provides such consent, the City may impose reasonable conditions, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Ordinance. City shall have the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Franchisee may mortgage this Ordinance, together with its Facilities and properties within the City, in order to secure any legal bond issue or other indebtedness of Franchisee, with no requirement for City's consent or that the trustees acknowledge in writing and agree to be bound by the terms of this Ordinance.

Section 7. City Rights and Obligations in Franchise.

A. City Supervision and Inspection. City shall have the right to inspect all construction and installation of Franchisee's Facilities to insure compliance with governing laws, ordinances, rules and regulations as they relate to the City approved permit.

B. Termination or Abandonment of Franchise. Upon any termination of this Franchise, if City and Franchisee are not engaged in efforts to renew or renegotiate this Franchise, (i) all above ground Facilities installed or used by Franchisee shall be removed by Franchisee at Franchisee's expense or de-energized and abandoned in place with approval of the City and the property on which the Facilities were used or restored by Franchisee to the condition it was in before installation; (ii) all underground Facilities installed or used by Franchisee shall be de-energized and abandoned in place.

C. City's Work in Right-of-Way. Whenever City shall perform or cause or permit to be performed any work in any Right-of-Way or Public Place where such work may disturb or interfere with Franchisee's Facilities are located, City shall, or shall require its permittees, to notify, in writing, Franchisee sufficiently in advance of the contemplated work to enable Franchisee to coordinate with the City or permittees, as applicable. No structures, buildings or signs shall be erected below Franchisee's Facilities or in a location that prevents Franchisee from accessing or maintaining its Facilities.

Section 8. Franchise Fee.

A. Franchisee shall pay monthly to City five (5) percent of Franchisee's Gross Revenues received from customers within the City limits of the City excluding amounts charged and received for separately billed governmental taxes and governmental fees.

B. The fee required by this section shall be due and payable within 30 days after the end of each month. With respect to any amount or portion thereof due hereunder that is not disputed in good faith by Franchisee, City shall have the right to charge interest at the rate of 5% per annum.

C. With each payment, Franchisee shall furnish City with a written statement verifying the amount of gross revenues of Franchisee within City for the monthly period covered by payment.

D. City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this Ordinance.

E. City will provide notice of any annexation of territory, including a map of the annexed territory, a legal description of the boundary change, each site address to be annexed as recorded on county assessment and tax rolls and a copy of the annexation ordinance within ten (10) days of the annexation. Franchisee's obligation to pay franchise fees on revenue generated by service to the annexed property shall begin ten (10) days after notice is actually provided.

Section 9. Franchise Records and Reports. Franchisee shall keep accurate books of financial accounts at an office within the State of Oregon throughout the term of this franchise

and for six years after the expiration or termination of this Ordinance. Franchisee shall produce all books and records directly concerning its gross revenues and other financial information necessary for calculation of the franchise fee for inspection by City, upon ten (10) days' written notice, during normal working hours provided that only records that support payments which occurred during a period of three (3) years prior to the date the City notifies Franchisee of its intent to conduct an inspection shall be subject to review. City may require periodic reports from Franchisee relating to its operations within the City. City shall have the right during the term of this agreement or within 180 days after expiration or termination of the Ordinance to audit Franchisee's records for the period of three (3) years prior to the audit. If the audit reveals underpayment of five percent (5%) or more, the City may expand the audit to cover up to six (6) years. The audits shall be undertaken by a qualified person or entity selected by City. The costs of the audit shall be borne by City, unless the results of the audit reveal an underpayment of more than five percent (5%) or more, the full cost of the audit shall be paid by Franchisee. Franchisee shall promptly pay the portion of the underpayment as determined by the audit not subject of a good faith dispute to City together with nine percent (9%) annual interest from the date the payment should have been made to the date the payment is actually made. Any audit information obtained by City under these provisions shall be kept confidential to the maximum extent allowed by Oregon law, except that this obligation shall not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Ordinance is at issue. Franchisee's obligations under this Section shall be subject to the requirements of applicable laws.

Section 10. Permit and Inspection Fees. Subject to the limitations set forth in Section 8, nothing in this Ordinance shall be construed to limit the right of City to require Franchisee to pay permit fees or reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities.

Section 11. Subdivision Plat Notification. City shall provide written notice of tentative subdivision approval, including a copy of the tentative plan, to Franchisee at least Twenty (20) days prior to approving the tentative plan to provide Franchisee an opportunity to comment on the portion(s) of the plan which impact Franchisee's facilities and/or easement rights. Further, City agrees that any public utility easements included on each final plat will be at least ten feet in width. City also will include a restrictive covenant or easement as part of the final plat limiting development on individual lots within Franchisee's easement corridors upon a timely request from Franchisee that is consistent with the restrictions set forth in the applicable easements held by Franchisee and that indicates that consent to install any fences, structures, buildings or other permanent facilities such as swales, ponds or other hardscaping features within the easement must be obtained from Franchisee. With respect to new public utility easement areas, the City will include a restrictive covenant or easement as part of the final plat prescribing that no fences, structures, buildings or other permanent facilities such as swales, ponds, or other hardscaping features may be installed or maintained in the public utility easement area.

Section 12. Enforcement and Termination of Franchise for Violation

A. Default. City may terminate this franchise, as provided in Section 12.B below subject to Franchisee's right to a court review of the reasonableness of such action upon the failure of Franchisee to perform promptly and completely any material term, condition, or obligation imposed upon it under this franchise; provided that City shall first provide Franchisee written notice of any such failure and Franchisee shall have sixty (60) days from receipt of such notice to cure the failure, or if the failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing the failure. If Franchisee does not cure the failure within the sixty (60) day period, or does not commence and diligently pursue curing the failure within the sixty (60) day period, then the City Council may declare the franchise terminated.

B. Termination for Defaults Not Cured. The City may terminate this Franchise for defaults that are not cured within the time allowed by Section 12.A by providing notice of termination to Franchisee following the declaration of termination by the City Council. Franchisee may challenge the notice of termination by providing a written protest to the City Manager within ten (10) business days of the date of the notice of termination. The City Manager, on receipt of the protest, shall refer the protest to the City Council for a decision. The termination will not become final until after the decision by the City Council. Because of the potential public health and safety risks that could arise as a result of cessation of power distribution within the City, if the City decides to terminate the franchise, it shall set a termination date that allows for implementation of a plan to assure continued electrical power delivery service.

Section 13. Remedies not Exclusive; Waiver. All remedies granted the City under this Ordinance are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Failure to enforce any provision of this Ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this Ordinance.

Section 14. Franchise Term; Acceptance; Effective Date. This Franchise is granted for a term of five (5) years beginning on April 1, 2021. The Franchisee shall, within sixty (60) days from the date this ordinance passes, file with the City its written unconditional acceptance of this Franchise, and if the Franchisee fails to do so, this ordinance shall be void. In the event of any conflict between the terms of this Franchise and future City ordinance setting forth terms and conditions of general applicability to franchises, the terms and conditions of this Franchise shall govern.

Section 15. Renewal. At least 120 days prior to the expiration of the Franchise, Franchisee and City shall agree to either extend the term of this Franchise for a mutually acceptable period of time or the parties shall use good faith efforts to renegotiate a replacement Franchise. Notwithstanding the foregoing, so long as the parties are in good faith negotiations to replace this Franchise, this Franchise shall continue to remain in effect unless otherwise terminated as provided herein.

Section 16. Severability. If any section, subsection, sentence, clause or portion of this Ordinance is for any reason held invalid or rendered unconstitutional by any Court of competent jurisdiction, that portion shall be deemed a separate, distinct, independent and severable provision and the holding shall not affect the validity or constitutionality of the remaining

portion of this Ordinance. If for any reason, the franchise fee is invalidated by court or governmental agency, the then highest permissible franchisee fee allowed shall be the franchise fee.

Section 17. Notices. Any notice required or permitted under this Ordinance shall be in writing and delivered in person, by overnight courier or by registered or certified United States mail, addressed as follows:

To City:
City of Prineville
ATTN: City Manager
387 NE Third Street
Prineville, OR 97754

To Franchisee:
Pacific Power
ATTN: Customer and Community Affairs Vice President
825 NE Multnomah
Lloyd Center Tower, Suite 2000
Portland, OR 97232

or other address specified by either party in writing in a notice conforming with these requirements. Notices shall be deemed effective when received or, if (i) sent via overnight courier, the next business day, and (ii) if deposited with postage prepaid in the United States Mail as registered or certified mail, three (3) business days following the date of deposit.

Section 18. Waiver of Jury Trial. To the fullest extent permitted by law, each of City and Franchisee waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this franchise. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Section 19. Interpretation/Jurisdiction. Interpretation of the Franchise shall be governed by the laws of the State of Oregon and any legal action relating to this Franchise shall be brought in Crook County Circuit Court.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AND APPROVE THE AFOREMENTIONED AGREEMENT, presented for the first time at a regular meeting of the City Council held on July ____, 2021 and the City Council finally enacted the foregoing ordinance this ____ day of July ____, 2021.

Rodney J. Beebe
Mayor

ATTEST:

Lisa Morgan, City Recorder

Accepted by PacifiCorp, dba Pacific Power

By: _____

Name: _____

Title: _____

Date: _____

**RESOLUTION NO. 1498
CITY OF PRINEVILLE, OREGON**

A RESOLUTION AUTHORIZING THE CITY OF PRINEVILLE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH STATE OF OREGON ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR TOM McCALL ROUNDABOUT ARTWORK

Whereas, the Ochoco Highway, OR 126, Highway No. 41, are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission; and

Whereas, Airport Way is part of the City of Prineville (“City”) street system and is under the control of the City; and

Whereas, State of Oregon, acting by and through its Department of Transportation’s (“State”) “FFO-OR126 @ Tom McCall Road (Prineville) Project” (“Project”) is for the design, acquisition of right-of-way and construction of a roundabout at the intersection of OR 126 with Tom McCall Road, Airport Way, and George Millican Road; and

Whereas, City and Crook County entered into Agreement No. 31050 and Amendment No. 1, which codified the roles and responsibilities of the City and Crook County during and upon completion of the Project; and

Whereas, pursuant to Agreement No. 31050, City wishes to construct and install decorative landscaping and decorative artwork within the roundabout on State property; and

Whereas, State has prepared an Intergovernmental Agreement (“Agreement”) for the City’s consideration labeled as Misc. Contracts and Agreements No. 34922; 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 Intergovernmental Agreement attached to this Resolution between the City and County is hereby approved and that the Mayor is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this ____ day of July, 2021.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

INTERGOVERNMENTAL AGREEMENT
Tom McCall Roundabout Artwork
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;" and the **CITY OF PRINEVILLE**, acting by and through its elected officials, hereinafter referred to as "City," 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. 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).
3. Airport Way is a part of the city street system and are under the control of the city.
4. State's 'FFO-OR126 @ Tom McCall Road (Prineville) project (Key No. 18728) is for the design, acquisition of right of way and construction of a roundabout at the intersection of OR126 with Tom McCall Road, Airport Way and George Milican Road.
5. City and Crook County entered into Agmt No. 31050 and Amendment No. 1. Said Agreement and Amendment cover the roles and responsibilities of the Parties both during and upon completion of the Project.
6. Pursuant to Terms of Agreement, Paragraph 7 of Agreement No. 31050, City wishes to construct and install decorative landscaping and decorative artwork within the roundabout on State property.
7. For the purpose of this Agreement, 'Artwork' shall be defined as any drawing, painting, sculpture, statue, or other item of a creative or artistic nature intended or used to attract the interest or attention of travelers, but does not include roadside memorials, political advertising, or other unpermitted signs; and differs from the definition assigned to such term under the Highway Beautification Program (OAR 734, Division 57).

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 City soliciting, awarding and installing permanent Artwork within the roundabout consistent with a permit to be issued by State, and supporting Aesthetic Enhancements including decorative landscaping and other appurtenances within the Project boundaries, hereinafter referred to a 'Project'. The location of the Project is identified on the map attached hereto and by this reference made a part hereof.
2. All costs associated with the Project shall be the responsibility of the City.
3. Regarding Artwork and Aesthetic Enhancements, Parties agree that:
 - a) Safety is a primary concern, therefore Artwork and Aesthetic Enhancements allowed to be placed on state highway right-of-way must be found by ODOT to not diminish the safety of travelers or the state highway system;
 - b) The design of all Artwork and Aesthetic Enhancements will be coordinated with the aesthetic design of the highway system and all its features taking into consideration the roadway design, the clear zone, travelers, and environment;
 - c) The design of all Artwork and Aesthetic Enhancements must incorporate long lasting materials and construction techniques that will require minimal care and resist vandalism and must be no larger than a size and scale that is compatible with the surrounding area and landscape.
4. Parties agree that the ADA responsibilities described in Agreement No. 31050 and Amendment No. 1 to Agreement No. 31050 shall be incorporated into this Agreement.
5. 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 if applicable) 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 five (5) calendar years following the date of final execution of this Agreement by both Parties.

CITY OBLIGATIONS

1. City shall perform the work described in Exhibit A.
2. City shall be responsible for all costs associated with the Project.
3. City agrees to maintain at its expense all decorative landscaping. Any Artwork and Aesthetic Enhancements associated with the Project and placed within ODOT right of way shall be subject to applicable ODOT policies and standards not specifically mentioned herein. The City shall ensure that the Artwork and Aesthetic

Enhancements will be kept clean and in good repair; and if damaged by vehicle crashes, vandalism (including graffiti), acts of nature, or regular wear or aging, will be repaired or removed within 14 days of discovery (or offensive graffiti removed within 48 hours of discovery). City agrees that if the Artwork and Aesthetic Enhancements are not maintained, repaired or removed as agreed-upon, the Artwork and Aesthetic Enhancements may be removed by ODOT, after notice to City and reasonable opportunity to cure, at City expense and without commitment by ODOT for restoration, replacement, or compensation to City.

4. City agrees to obtain a separate permit from State for the placement of a city entrance/welcome sign within the roundabout that has been requested by city and approved by State.
5. City shall obtain a miscellaneous permit to occupy State right of way through the State District 10 Office prior to the commencement of construction
6. 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 279B.220, 279B.225, 279B.230, 279B.235 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.
7. City may perform any work necessary to complete City's obligations for the Project with its own forces or may retain one or more contractors including separate contractors for goods and services, personal services, and public improvement.
8. If City retains any contractors, City shall ensure all contractors follows the public contracting laws within ORS Chapters [279A](#), [279B](#) and [279C](#).
9. 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.
10. 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.

11. 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.
12. 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 any time 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.
13. 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.
14. Agency'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. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State agrees that City shall perform the work as described in Terms of Agreement, Paragraph 1 above.
2. State shall bear no financial responsibility for any work performed in conjunction with this Project.
3. State's Project Manager for this Project is Jim Scholtes – Assistant District 10 Manager, 63055 N. Highway 97, Bldg M, Bend, OR 97703, (541) 388-6458, [james.m.](mailto:james.m.scholtes@odot.gov)

scholtesl@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.
 - 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 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. 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.
9. 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

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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.

SIGNATURE PAGE FOLLOWS

CITY OF PRINEVILLE, by and through its
elected officials

By _____
Mayor

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
District 10 Manager

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency's Counsel

Date _____

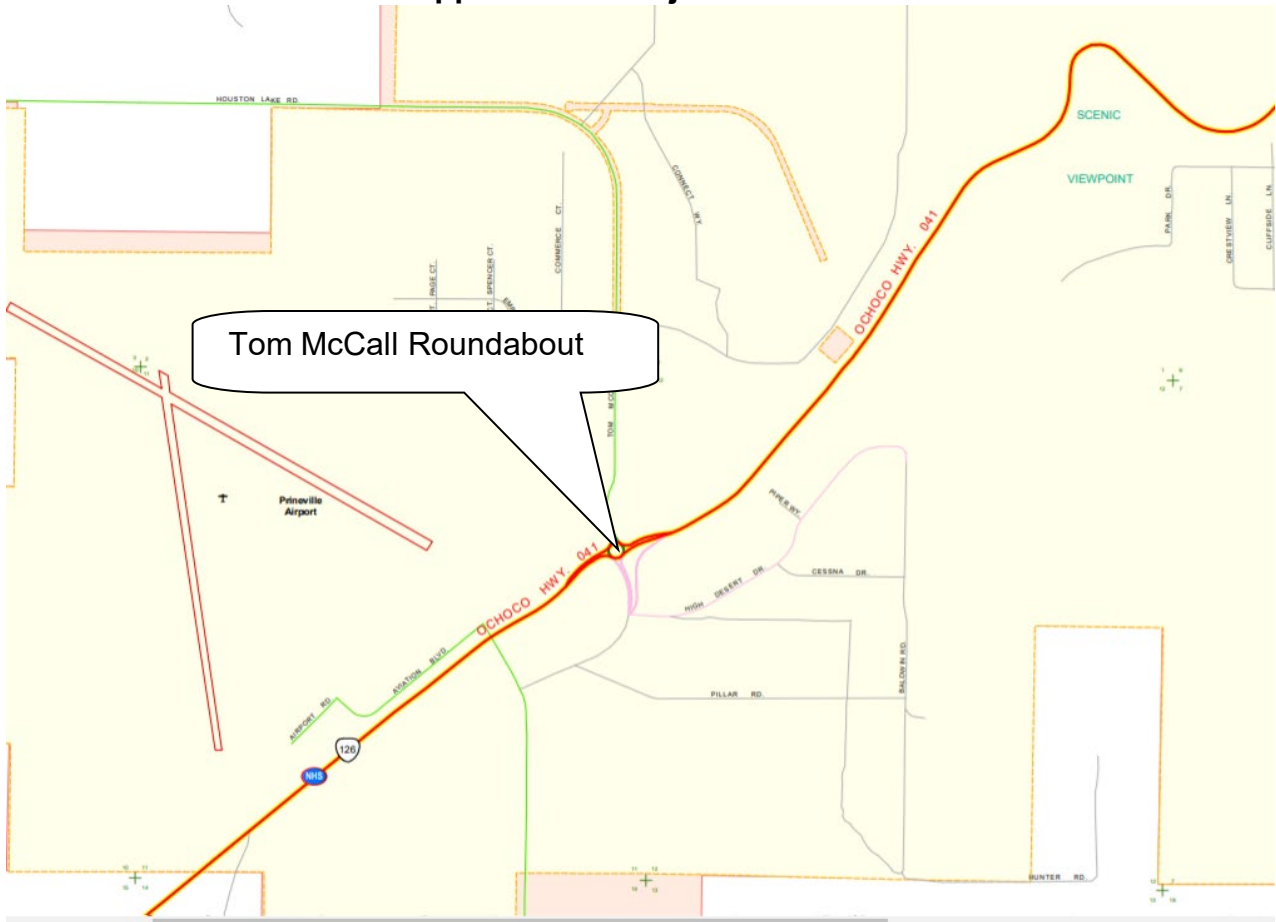
Agency Contact:

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

State Contact:

Jim Scholtes - Assistant District 10
Manager
63055 N. Highway 97, Bldg K
Bend OR, 97701-5765
(541) 388-6458
james.scholtes@odot.state.or.us

EXHIBIT A
Approximate Project Location



**RESOLUTION NO. 1499
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION DECLARING THE NECESSITY AND INTENT TO APPROPRIATE
CERTAIN DESCRIBED REAL PROPERTY, AUTHORIZING EPIC LAND
SOLUTIONS, INC. TO NEGOTIATE FOR ITS ACQUISITION, AND AUTHORIZING
INSTITUTION OF CONDEMNATION PROCEEDINGS IF NECESSARY**

Whereas, the City of Prineville (“City”) may exercise the power of eminent domain pursuant to ORS 35.205 through ORS 35.415, and the laws of the State of Oregon generally, when the exercise of such power is deemed necessary by the City’s governing body to accomplish public purposes for which the City has responsibility; and

Whereas, City has the responsibility of providing transportation routes within city limits that mitigates traffic congestion; and

Whereas, City has proposed a Project that connects Peters Road to North Main Street (“Project”); and

Whereas, in order to construct the project, the City must acquire right-of-way across certain real property, more particularly described below; and

Whereas, the City has contracted with Epic Land Solutions, Inc. to assist in obtaining the right-of-way interests needed to construct the Project.

Now, Therefore, the City of Prineville resolves the following:

1. The City finds and declares that the Project will serve a valuable and necessary public purpose.
2. The City finds that it is necessary and desirable to acquire right-of-way over and along the relevant parcels necessary for the Project.
3. The relevant parcels of property to be acquired are strips of land within the following taxlots:
 - a. 141632BA02000
 - b. 141629CC01400
 - c. 1416320000301
 - d. 1416320000302
 - e. 1416320000303
4. Epic Land Solutions, Inc. is hereby authorized and directed to negotiate on behalf of the City of Prineville, with the owners of the above described real property for the purchase of the necessary right-of-way.

5. In the event that Epic Land Solutions, Inc. is unable to reach an agreement with the owner(s) of the property as to the compensation to be paid therefor, the City Attorney is hereby authorized and directed to institute condemnation proceedings in the name of the City of Prineville in a court of competent jurisdiction for the purposes of acquiring title to possession of the above-described right-of-way.

Approved by the City Council this ____ day of July, 2021.

Rodney J. Beebe

ATTEST:

Lisa Morgan, City Recorder