

**RESOLUTION NO. 1383
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING FLEXIBLE MAINTENANCE SERVICE AGREEMENT
WITH THE STATE OF OREGON DEPARTMENT OF TRANSPORTATION**

Whereas, The City of Prineville (“City”) and the State of Oregon, acting by and through its Department of Transportation (“ODOT”) have negotiated an agreement titled “Flexible Service Maintenance Agreement - Ochoco Highway: Madras Prineville Interchange” designated by ODOT as Miscellaneous Contracts and Agreements No. 33152 (the “Agreement”); and

Whereas, pursuant to the Agreement, the Parties have agreed to share the costs and responsibilities of necessary repairs and upgrades and for City to assume responsibility for ongoing landscaping and maintenance for the landscaped area at the Ochoco Highway-Madras Prineville Interchange (“West Y”); and

Whereas, pursuant to the Agreement, ODOT agrees to provide City \$30,000.00 for repairs and upgrades to the West Y; 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 Agreement attached hereto is hereby approved and that the Mayor is authorized to sign such Agreement on behalf of the City.

Approved by the City Council this ____ day of February, 2019.

Steve Uffelman, Mayor

ATTEST:

Lisa Morgan, City Recorder

FLEXIBLE SERVICE MAINTENANCE AGREEMENT
Ochoco Highway: Madras Prineville Interchange

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the City of Prineville, acting by and through its elected officials hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#), [366.572](#), [366.574](#) and [366.576](#), State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of maintenance or improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. Parties have determined it is both to their mutual benefit and to the general public's benefit for the Agency to perform improvements and upgrades of the landscaped area at the Ochoco Highway – Madras Prineville Interchange.
3. Parties have determined that it is both to their mutual benefit and to the general public's benefit if the Agency maintains responsibility of the landscaped area at the Ochoco Highway – Madras Prineville Interchange.

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. Parties agree to share the costs and responsibilities of necessary repairs and upgrades and for the Agency to assume responsibility for ongoing landscaping and maintenance of the landscaped area at the Ochoco Highway – Madras Prineville Interchange; hereinafter referred to as "Project". The location of the Project is as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The total financial obligation for State will not exceed \$30,000.00 during the term of this Agreement.
3. 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.
4. This Agreement may be modified by mutual consent of both Parties and upon execution of amendments to this Agreement stating said modifications.

AGENCY OBLIGATIONS

1. Agency shall provide administrative oversight of the Project and shall perform or contract for work performed to upgrade and repair existing irrigation system at project site to include: installing conduit from existing transformer to road crossing, road bore and provision of bore receiving pit, installing conduit from road bore to middle landscape area, installing a meter base pole, installing conduit to well house, installing new pump and necessary connections (i.e. electric).
2. Agency shall perform, at Agency's expense, ongoing landscaping and related maintenance of the Project.
3. 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.
4. Agency shall keep accurate cost accounting records. Agency shall prepare and submit itemized invoices for project costs 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 the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$30,000.00, including all expenses. Travel expenses will not be reimbursed. Invoices shall be submitted to: Department of Transportation, 63055 N. Highway 97, Bend, Oregon 97703.
5. Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Certification of right of way acquisition work must be made by the Agency (or on behalf of its consultant) doing the work. If Agency acquires the right of way, they shall provide a letter from Agency's legal counsel certifying that 1) the right of way needed for the Project has been obtained and 2) right of way acquisition has been completed in accordance with the right of way requirements contained in this Agreement. The certification form shall be routed through the Oregon Department of Transportation, Region 4, Right of Way Office, David Brown, 63055 N Highway 97, Bend, Oregon, (541) 388-6381, david.t.brown@odot.state.or.us for co-signature and possible audit. If Agency elects to have State perform right of way functions, a separate agreement shall be executed between Agency and State right of way, referencing this Agreement number.

6. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
7. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
8. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
9. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any Agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at 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.
10. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

11. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
12. Agency's Project Manager for this Project is Scott Smith, Street Supervisor, City of Prineville, 1233 NW Lamonta Road, Prineville, Oregon 97754, (541) 416-2165, ssmith@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 to reimburse Agency up to \$30,000 for costs incurred to install new power drop, road bore and conduit, pump and connections at project site.
2. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of the Project invoice a maximum amount of \$30,000.00. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
3. State hereby grants the Agency to the right to enter upon State highway right-of-way for the purpose of performing the necessary repairs and upgrades of the project area, and performing necessary ongoing landscaping and maintenance of the project area.
4. 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. State shall not be indebted or liable for any obligation created by this Agreement in excess of the debt limitation of Article XI, Section 7, of the Oregon Constitution. State shall not assume any debts of Agency in violation of Article XI, Section 8, of the Oregon Constitution.
5. State's Project Manager for this Project is James Scholtes, Assistant District Manager, Oregon Department of Transportation, District 10, Building K, 63055 N. Highway 97, Bend, Oregon 97703, 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.

GENERAL PROVISIONS

1. Both Parties acknowledge and agree that each Party, the Oregon Secretary of State's office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of each Party that are pertinent to this Agreement to perform examinations

and audits and make excerpts and transcripts. Both Parties shall retain and keep all files and records for a minimum of six (6) years following termination of the Agreement.

2. State personnel assigned to assist Agency shall not be considered employees of Agency. Agency personnel assigned to assist State shall not be considered employees of State. Agency and State shall each be responsible for the following items in regard to their own employees:
 - a) Payment of all wages and benefits that its employees are entitled to receive through their employment including, but not limited to, vacation, holiday and sick leave; other leaves with pay; medical, dental, life, and accident insurance; other insurance coverage; overtime; Social Security; Workers' Compensation; unemployment compensation, and retirement benefits.
 - b) Withholding Social Security, federal and state taxes, and other regular deductions from wages paid to employees.
 - c) Administration of applicable civil service statutes and rules, classification and compensation plans, collective bargaining agreements, and other laws and agreements governing personnel relations with employees.
3. The Parties to this Agreement are of equal authority. Each Party acts independently in the performance of its obligations and functions under this Agreement, and neither Party is to be considered the agent of the other.
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. All employers, including both Parties, 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. Both Parties shall ensure that each of their subcontractors complies with these requirements.
9. **Americans with Disabilities Act Compliance:**
 - a. Each Party shall ensure that the services it provides under this Agreement ("Services") comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"). The Parties shall use ODOT standards to assess whether the Services comply with the ADA, including, but not limited to, ODOT Maintenance Operational Notices MG 100-107 ("MG 100-107"), MG144-03 ("MG144-03"), and MG Activities-2 ("MG Activities-2").
 - b. The scope of the Services performed under this Agreement is limited to maintenance activities and shall not include alteration, upgrade, or construction of sidewalks or curb ramps, or installation of pedestrian activated signals.

- c. When Agency is providing Services to ODOT under this Agreement, Agency shall:
- i. Promptly notify ODOT of completion of Services and allow ODOT to inspect completed Services located on or along a state highway for ADA compliance, prior to acceptance of such Services and release of any Agency contractor, and
 - ii. Ensure that temporary pedestrian routes are provided through or around any work zone as provided in MG Activities-2 and Chapters 1 and 5 of the Oregon Temporary Traffic Control Handbook 2011 ("OTTCH"). For Services included in MG Activities-2 "Situations" Paragraph 2, Agency shall provide ODOT with adequate information to allow ODOT to provide advance notice of any temporary pedestrian route to the public, people with disabilities, and disability organizations. The Parties acknowledge that providing advance notice may not be possible in some such circumstances, including but not limited to, when Services are provided on an urgent or emergency basis, or where the nature and location of the Services are unknown until the beginning of the workers' shift.
- d. ODOT Maintenance Operational Notices MG 100-107, MG144-03, MG Activities-2, and the OTTCH are incorporated herein by reference.
- i. The OTTCH is available at <http://www.oregon.gov/ODOT/Engineering/Pages/OTTCH.aspx> Copies of MG 100-107, MG144-03, and MG Activities-2 are available for inspection at the ODOT District 10 Office located at 63055 N. Highway 97, Bend, Oregon 97703 during regular business hours, or at the following locations online:
 - MG 100-107:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG100-107_w-diagram.pdf
 - MG 144-03:
https://www.oregon.gov/ODOT/Engineering/DOCS_ADA/MG144-03.pdf
 - MG Activities-2:
https://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/MG-Activities-2.pdf
 - ii. All references to MG 100-107, MG144-03, and MG Activities-2 in this Section refer to the version of the policy in place at the time the Services are performed.

10. This Agreement may be terminated by mutual written consent of both Parties, or by either Party, upon thirty (30) calendar days' written notice. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11. Neither Party shall enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from the other Party.
12. 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.
13. This Agreement and attached exhibit 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.

SIGNATURE PAGE FOLLOWS

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.

CITY OF PRINEVILLE, by and through
its elected officials

By _____

Title _____

Date _____

Agency Contact:

Name/Title: Scott Smith, Street
Supervisor
Address: 1233 NW Lamonta Road,
Prineville, Oregon 97754
Phone: (541) 416-2165
Email: ssmith@cityofprineville.com

STATE OF OREGON, by and through its
Department of Transportation

By _____
Region 4 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Assistant District 10 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Bonnie Heitsch via email
Assistant Attorney General

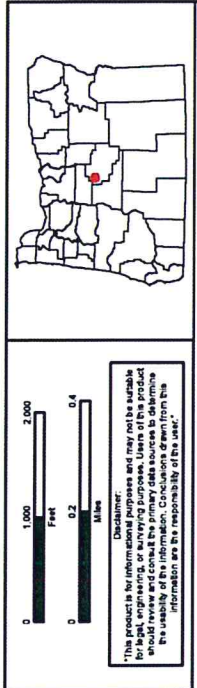
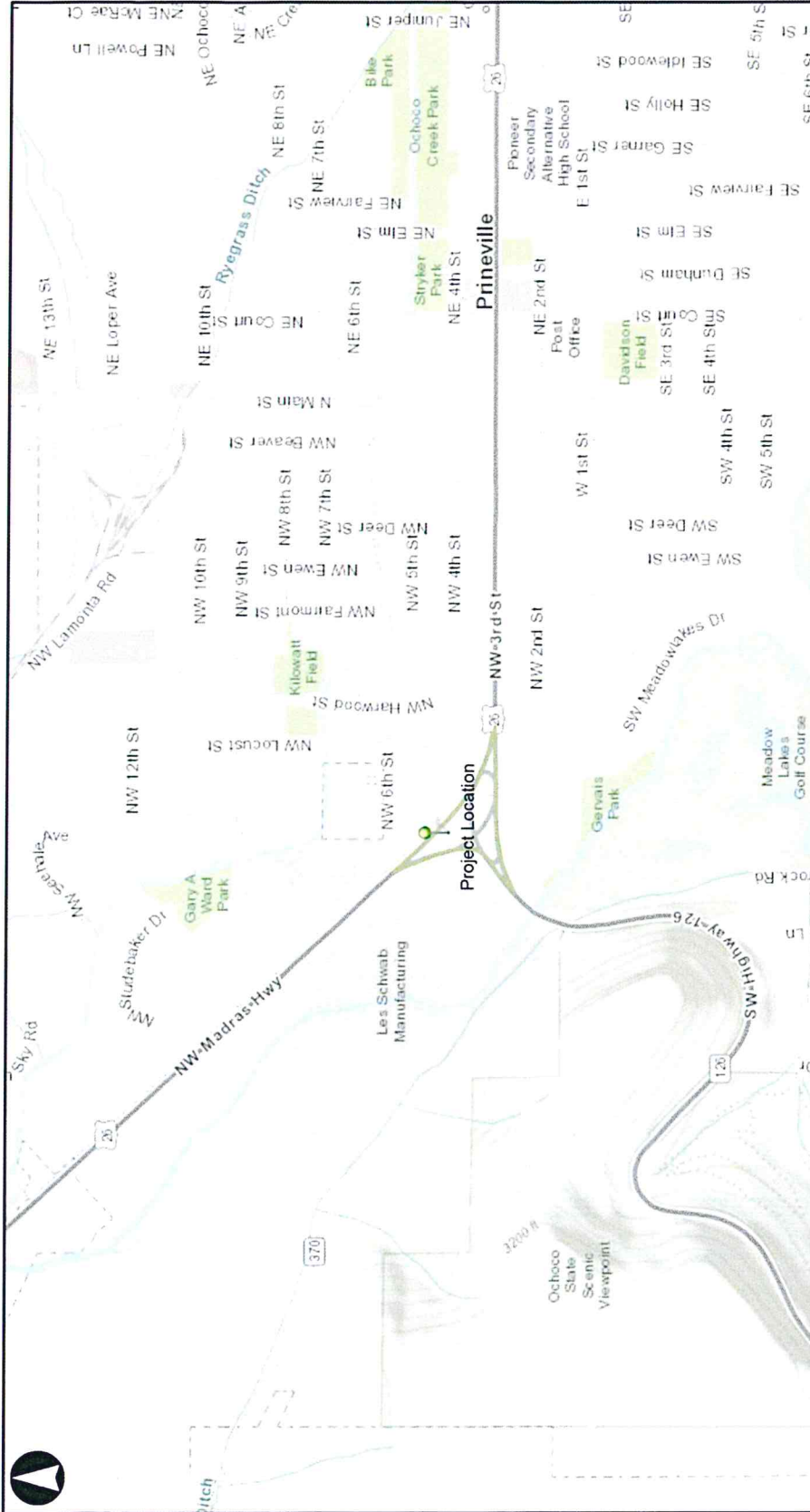
Date 12/27/18

State Contact:

Name/Title: James Scholtes, Assistant
District 10 Manager
Address: 63055 N. Highway 97, Bend,
Oregon 97703
Phone: (541) 647-0314
Email: james.m.scholtes@odot.state.or.us

EXHIBIT A: Project Location

ODOT Region 4 / Agency 11
 Agreement No. 33152



Oregon Department of Transportation
Ochocho Highway: Madras Prineville
Intersection Landscaping

Federal Aid-Number: n/a
 ODOT Key Number: n/a
 County: Crook County
 City: Prineville
 Date of Map Creation: December 26, 2018