

**RESOLUTION NO. 1384
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN AGREEMENT WITH THE STATE OF OREGON
PARKS AND RECREATION DEPARTMENT AND CROOK COUNTY PARKS AND
RECREATION DISTRICT**

Whereas, City of Prineville (“City”) owns four park areas: (1) Pioneer Park; (2) Stryker Field; (3) Crooked River Wetlands Complex; and (4) Barnes Butte Recreational Complex.

Whereas, Crook County Parks and Recreation District (“District”) owns and operates the following parks within Crook County: Harwood Park, Gary Ward Park, Ochoco Creek Park, Library Park, Mini Park, Mountain View Park, Crooked River Park, Rimrock Park, and Yellow Pine Park. District owns and operates the following sports fields within Crook County: Kilowatt Field, Stryker II Field, Les Schwab Fields, Rimrock Fields, and Davidson Field. District also owns and operates a bike park, skate park, pool, skating rink, angling pond and community garden.

Whereas, On or about November 7, 2018, the City was awarded a \$40,000.00 Local Government Grant from the Oregon Parks and Recreation Department (“Grant”) for the creation of a Master Plan to guide future development of 460 acres of open space within city limits and urban growth boundary, recently purchased by the City of Prineville, Oregon described as the Barnes Butte Recreational Complex Master Plan. The total costs for the Barnes Butte Recreational Complex Master Plan is \$90,000.00, with City contributing \$50,000.00.

Whereas, District and City desire to have a Community Wide Park Master Plan (“Project”), which would include all of the recreational and park areas owned and operated by the Parties. The estimated cost for this plan is \$140,000.00.

Whereas, Oregon Parks and Recreation Department (“State”) has agreed to allow the Grant to be used towards the Project.

Whereas, the parties have negotiated an Agreement in which the parties share the cost of the Project in which the City will contribute \$90,000.00 (\$40,000.00 of which being from the Grant) and District will contribute \$50,000.00 to the Project.

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 and City Manager are 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

AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and between the **City of Prineville**, a municipal corporation, (hereinafter “City”); **Crook County Parks and Recreation District**, an Oregon public recreational district (hereinafter “District”); and the State of Oregon, acting by and through its **Oregon Parks and Recreation Department** (hereinafter “State”); collectively the “Parties,” and individually a “Party.”

Recitals

A. City owns four park areas: (1) Pioneer Park; (2) Stryker Field; (3) Crooked River Wetlands Complex; and (4) Barnes Butte Recreational Complex.

B. District owns and operates the following parks within Crook County: Harwood Park, Gary Ward Park, Ochoco Creek Park, Library Park, Mini Park, Mountain View Park, Crooked River Park, Rimrock Park, and Yellow Pine Park. District owns and operates the following sports fields within Crook County: Kilowatt Field, Stryker II Field, Les Schwab Fields, Rimrock Fields, and Davidson Field. District also owns and operates a bike park, skate park, pool, skating rink, angling pond and community garden.

C. On or about November 7, 2018, the City was awarded a \$40,000.00 Local Government Grant from the Oregon Parks and Recreation Department (“Grant”) for the creation of a Master Plan to guide future development of 460 acres of open space within city limits and urban growth boundary, recently purchased by the City of Prineville, Oregon described as the Barnes Butte Recreational Complex Master Plan. The total costs for the Barnes Butte Recreational Complex Master Plan is \$90,000.00, with City contributing \$50,000.00.

D. District and City desire to have a Community Wide Park Master Plan (“Project”), which would include all of the recreational and park areas owned and operated by the Parties. The estimated cost for this plan is \$140,000.00.

E. The parties wish to share the cost of the Project and have orally agreed that City will contribute \$90,000.00 (\$40,000.00 of which being from the Grant) and District will contribute \$50,000.00 to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the parties’ mutual obligations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. The Parties hereby agree that the Agreement attached as Exhibit A and incorporated herein, is hereby incorporated into this Agreement as if fully set forth hereinafter,

and that each Party is bound by its terms unless expressly modified herein. State hereby consents that the grant for the Barnes Butte Recreational Complex Master Plan awarded on November 7, 2018 is hereby authorized to be used for the Project.

3. City and District agree to work collaboratively and in good faith on the Project.
4. The effective date of this Agreement is the date on which it is fully executed by all parties. Unless otherwise terminated or extended, the Project shall be completed by **October 1, 2020**. If project is completed before the designated completion date, the Agreement shall expire on the date final reimbursement payment is made by State to City.
5. Neither this Agreement, nor any of the rights granted by this Agreement, may be assigned or transferred by any Party.
6. None the Parties are, by virtue of this Agreement, a partner or joint venturing with the other Party and no Party shall have any obligation with respect to the other Party's debts or liabilities of whatever kind or nature, except as otherwise provided herein.
7. 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 a Party (the "Notified Party") with respect to which the either other party ("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. Any 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 the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third-Party Claims.

With respect to a Third Party Claim for which the City is jointly liable with either State or District (or would be if joined in the Third-Party Claim), the City 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 another Party in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of either other Party 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 the City on the one hand and of the other Parties 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. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon Law if the City had sole liability in the proceeding.

With respect to a Third Party Claim for which the District is jointly liable with either State or City (or would be if joined in the Third-Party Claim), the District 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 another Party in such proportion as is appropriate to reflect the relative fault of the District on the one hand and of either other Party 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 the District on the one hand and of the other Parties 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. The District's contribution amount in any instance is capped to the same extent it would have been capped under Oregon Law if the District had sole liability in the proceeding.

With respect to a Third Party Claim for which the State is jointly liable with either City or District (or would be if joined in the Third-Party Claim), the 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 another Party in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of either other Party 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 the State on the one hand and of the other Parties 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon Law if the State had sole liability in the proceeding.

City and District shall take all reasonable steps to cause its contractor(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 and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereinafter 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 either City or District's contractor or of any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

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

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

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

To: City of Prineville
387 NE Third Street
Prineville, OR 97754
Attn: City Engineer
eklann@cityofprineville.com

To: Crook County Parks & Recreation District
296 S. Main Street
Prineville, OR
Attn: Executive Director
duane@ccprd.org

To: Oregon Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, OR 97301
Attn: Mark Cowan
mark.cowan@oregon.gov

11. This Agreement may not be modified or amended except by writing signed by both Parties.

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

[Signature Page to Follow]

CITY OF PRINEVILLE

By: _____
Steve Uffelman, Mayor

Date

By: _____
Steve Forrester, City Manager

Date

CROOK COUNTY PARKS & RECREATION DISTRICT

By: _____
Jeremy Logan, Board Chair

Date

By: _____
Duane Garner, Executive Director

Date

STATE OF OREGON
Acting by and Through Its
OREGON PARKS AND RECREATION DEPARTMENT

By: _____
Mark Cowen, Grant Program Coordinator

Date

By: _____
Jan Hunt, Grants Section Manager

Date